United States Court of Appeals

for the Second Circuit

APPENDIX

76-1504 76-1505

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

WILLIAM R. BALOG, ET. AL.,

Appellants.

UNITED STATES OF AMERICA,

Appellee,

v.

ROGER SPINELLI, ET. AL.,

Appellants.

On Appeal From The United States District Court
For The District Of Connecticut

JOINT APPENDIX
(Volume I—Pages 1-426)

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
JUNE 27, 1972

CRIMINAL NO. H 290

- -x

UNITED STATES OF AMERICA

v.

WILLIAM R. BALOG, NICHOLAS V. LANESE, DANIEL LEVIN, a/k/a "Herman", MAX J. GORDON, RICHARD M. LANESE, CHARLES S. SUGLIA, DANIEL RICCO, LOUIS MASTRO, NICHOLAS MESSINA and WALTER T. HARDY

- -x

I N D I C T M E N T

The Grand Jury charges:

ONE COUNT

That from on or about the seventeenth day of December, 1971, and continuing thereafter up to and including the first day of January, 1972, in the State and District of Connecticut, WILLIAM R. BALOG, NICHOLAS V. LANESE, DANIEL LEVIN, a/k/a "Herman", MAX J. GORDON, RICHARD M. LANESE, CHARLES S. SUGLIA, DANIEL RICCO, LOUIS MASTRO, NICHOLAS MESSINA and WALTER T. HARDY, the defendants herein, did unlawfully, wilfully and knowingly conduct, finance, manager, supervise, direct and own a part of an illegal gambling business, to wit, bookmaking, said illegal gambling business (A) being in violation of the laws of the State of Connecticut, to wit, Public Act 28 (1968), Sections 23 and 24, (B) involving more than

five (5) persons who conduct, finance, manager, supervise, direct and own a part of said business, and (C) having a gross revenue of two thousand dollars ($2,000) in any single day.

In violation of Sections 1955 and 2 of Title 18, United States Code.

A TRUE BILL

s. (By foreman)

STEWART H. JONES
United States Attorney

s. JOHN R. TARRANT

9/25/72

FILED

AUG 10 9 28 AM '72

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

V. : CRIMINAL NO. H-298

WILLIAM R. BALOG :

MOTION TO DISMISS INDICTMENT

The defendant in the above-captioned criminal action moves the Court to dismiss the indictment in this action for the following reasons:

1. The indictment does not state facts sufficient to constitute an offense against the United States, in that,

(a) Section 23 and Section 24, of P.A. 865 (1971), upon which this indictment is largely based, are unconstitutional, in that they deny to the accused the equal protection of the law under the 14th Amendment to the Constitution; and, they permit gambling activities by persons authorized by the Commission on Special Revenue, but classify as a crime all gambling activities by others, and thus confer exclusive public emoluments and privileges, contrary to Article I, Section 1, of the Connecticut Constitution;

(b) The Grand Jury has failed to state that the defendant does not come within the exceptions to Section 23 and Section 24, P.A. 865.

2. No notice was given to the defendant of the investigation by the Grand Jury so as to allow defendant to exercise his right to challenge the array pursuant to Rule 6(b)(1), Federal Rules of Criminal Procedure.

3. Information upon which this indictment is based was gained from an order for electronic surveillance pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 19[illegible], 18 USC, 2510-2520. Title III is unconstitutional in that:

(a) It violates the defendant's rights as guaranteed by the 4th Amendment to the Constitution, and is therefore an unreasonable search and seizure in that:

(1) It allows unlimited extensions up to thirty days each and is, in effect, a lengthy and continuous search in violation of the 4th Amendment's prohibition of general searches;

(2) The provisions for notice of interception are inadequate; in that, the government may delay such notice up to ninety (90) days and possibly longer, persons not named in the order receive no notice of interceptions of their conversations. As a result, parties whose conversations have been intercepted lack the ability to reconstruct the events alleged and combat the evidence from such interceptions;

(3) Title III fails to name with particularity the persons and places to be searched and the things to be seized.

(4) It fails to effectively minimize the intrusions upon the privacy of many persons and leaves any efforts

to minimize such intrusions to the discretion of the executing officers;

(5) It allows continuous and indiscriminate interceptions of conversations of persons whose conduct is not suspect, and as to whom no probable cause to warrant such searches and seizure exists;

(6) It violates the defendant's right to the expectation of privacy and allows seizure of conversations irrespective of their content and without regard to whether or not they are privileged;

(7) No notice is given to the defendant at the time of seizure, or at any other time as to exactly what has been seized.

(b) It violates the defendant's rights under the 6th Amendment; in that, the defendant's conversations, seized pursuant to Title III, are statements taken from the defendant after an investigation has focused upon him, without advising him of his right to consult with counsel or to have counsel present;

(c) It violates the defendant's rights under the 5th Amendment; in that, the statements seized from the defendant are testimonial and self-incriminating and are taken without the defendant's knowledge and without his being advised of his right to remain silent;

(d) The existence of such authority for indiscriminate and broad interceptions of communications has a chilling effect upon free speech in violation of the 1st Amendment;

(e) Title 18, Section 1955, United States Code is unconstitutional, and Congress has exceeded its powers under Article I, Section 8, and the 10th Amendment to the United States Constitution.

WHEREFORE, the defendant prays that the indictment pending against him be dismissed.

THE DEFENDANT

By Richard T. Meehan
RICHARD T. MEEHAN
His Attorney

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to the United States Attorney, United States District Court, 915 Lafayette Boulevard, Bridgeport, Connecticut on August 16, 1972.

Richard T. Meehan
RICHARD T. MEEHAN
Attorney at Law

FILED
AUG 10 9 27 AM '72
U.S. DISTRICT COURT
BRIDGEPORT, CONN.
CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

VS. : CRIMINAL NO. H-298

WILLIAM R. BALOG :

MOTION FOR BILL OF PARTICULARS

The defendant in the above-captioned criminal action respectfully moves under Rule 7(f) of the Federal Rules of Criminal Procedure, that the Court order the attorney for the government to file a Bill of Particulars to the indictment now pending against him as follows:

1. State the five persons with whom this defendant is alleged to have conducted, financed, managed, supervised, directed, and owned a part of said gambling business.

2. State the names and business addresses of those persons with whom defendant is alleged to have gambled in the course of conducting said gambling business.

3. State the exact day or days upon which the United States alleges said gambling business had a gross revenue of $2,000.00.

4. State the exact date, time, and place on which the United States alleges defendant did conduct, finance, manage, supervise, direct and own a part of said gambling business; and on each date, time, and place given, state the persons with whom defendant is alleged to have committed the acts charged.

5. State in what way the United States alleges the defendant did unlawfully, wilfully and knowingly committed the

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following acts:

(a) conduct said gambling business

(b) finance said gambling business

(c) manage said gambling business

(d) supervise said gambling business

(e) direct said gambling business

(f) own said gamblin business

6. State in what way the said gambling business is in violation of P. A. 865, section 23 and section 24.

WHEREFORE, the defendant prays that said information is necessary to inform the defendant of the nature of the charges brought against him to adequately prepare his defense, to avoid surprise during the trial, and to protect him against a second prosecution for an inadequately described offense.

THE DEFENDANT

BY Richard T. Meehan
RICHARD T. MEEHAN
His Attorney

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to the United States Attorney at Bridgeport on August 14, 1972.

Richard T. Meehan
RICHARD T. MEEHAN
Attorney at Law

9/25/72

FILED

AUG 10 9 27 AM '72

U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

VS. : CRIMINAL NO. H-298

WILLIAM R. BALOG :

MOTION FOR DISCOVERY AND INSPECTION

The defendant moves under Rule 16, Federal Rules of Criminal Procedure, and where noted Title 18, United States Code, Section 3500, and, also where noted, Rule 6( ), that the Court order the attorney for the government to produce for inspection and copying or photographing the following:

1. All written or recorded statements or confessions made by the defendant, including, but not limited to, any logs, tapes, transcripts, records, or F.B.I. "airtels" of conversations to which defendant was a party, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may be known to the attorney for the government.

2. Any logs, tapes, transcripts, records or F.B.I. "airtels" of conversations intercepted by electronic surveillance upon the defendant's premises, or by such surveillance upon means of communication, as defined in 18 USC 2510(1), originating from

or received at the defendant's premises, or of any conversations recorded pursuant to an order under 18 USC, 2518 naming the defendant as a party whose conversations are to be intercepted and which may be employed to prove the guilt or innocence of the defendant, whether or not the defendant was a party to any of these conversations.

3. Any logs, tapes, transcripts or F.B.I. "airtels" of conversations intercepted by means of electronic surveillance, pertaining to the subject matter of this indictment, in which the conversing parties have not all been identified so that the defendant might determine whether he was a party to these.

4. Any order authorizing electronic surveillance upon which the defendant's name appears pursuant to 18 USC, 2518(4)(a), or which authorized seizure of conversations to which defendant was a party or which were recorded upon or intercepted from the defendant's premises, and any extensions thereof, together with any applications and affidavits in support thereof.

5. The exact times and dates of all conversations seized pursuant to any order under 18 USC, 2518 and the extent of the information gained during such surveillance, and the number of calls intercepted by such surveillance and recorded by any pen register employed in such surveillance so that the defendant may determine whether the agents involved exceeded their authority under said order or failed to minimize the intrusions caused by their surveillance, whether or not such information is to be employed by the government in the prosecution of this indictment.

6. Tapes, records, logs or listings of the fruits of any pen register employed in said surveillance, including the extent and duration of the use of said pen register and the number of persons recorded thereon.

7. Any reports given to the judge issuing the order for said surveillance, pursuant to 18 USC, 2518 (6), pertinent to this indictment.

8. Any reports from the judge issuing the order for said surveillance given to the Administrative Office of the United States Courts pursuant to 18 USC, 2519(1), concerning the period in which said order was in effect.

9. Any reports from the Attorney General or Assistant Attorney General to the Administrative Office of the United States Courts pursuant to 18 USC, 2519(2), concerning the period in which said order was in effect.

10. Any reports from the Director of the Administrative Office of the United States Courts to Congress pursuant to 18 USC, 2519(3), concerning the period in which said order was in effect.

11. The exact date and time upon which said surveillance was concluded, and the exact date and time upon which notice was given of said surveillance to the defendant.

12. Results or reports of scientific tests or experiments made in connection with this case, such as spectographic analysis or voiceprints of any conversations seized in this case, within the possession, custody or control of the government, the exist-

ence of which is known, or by the exercise of due diligence may become known to the attorney for the government.

13. Name, or names, and addresses of experts used to make said scientific tests or experiments and the makes and model numbers of the machines used, and the numbers of tests conducted.

14. Any search and seizure warrants, together with the affidavits in support thereof, used in the investigation or arrest of the defendant.

15. The names and addresses of all persons whom the government intends to use as witnesses against the defendant, so that said persons may be properly investigated prior to trial to determine their reputations in their respective communities, as to truth and veracity.

16. The statements of any witnesses, after they have testified on direct examination for the government, in the possession of the United States which relate to the subject matter of the testimony of those witnesses, pursuant to 18 USC 3500(b).

17. The testimony before the Grand Jury of any witness the government intends to call after they have testified on direct examination, pertaining to the subject matter of their testimony, for impeachment purposes.

18. The criminal record, if any, of all witnesses the government intends to use against the defendant at the time of trial.

19. The names and addresses of any local or state police officers, who investigated the case against the defendant with government agents.

20. The time, date and location of any search and seizure

conducted during the investigation or arrest of the defendant.

21. All exculpatory information now known to the attorney for the government, or through the exercise of due diligence may be known.

22. The method of selection, drawing, or summoning of the members of any Grand Jury involved in this case, and the names and legal qualifications of each of the Grand Jurors, so that the defendant may determine whether he has grounds to dismiss said indictment pursuant to Rule 6(b)(2). The defendant seeks this information under Rule 6(e).

WHEREFORE, the defendant prays that the information is necessary to enable the defendant to adequately prepare his defense, and that this request is reasonable.

THE DEFENDANT

BY Richard T. Meehan
RICHARD T. MEEHAN
His Attorney

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to the United States Attorney at Bridgeport on August 14, 1972.

Richard T. Meehan
RICHARD T. MEEHAN
Attorney at Law

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

WILLIAM R. BALOG
NICHOLAS V. LANESE
RICHARD M. LANESE AND
NICHOLAS MESSINA

CRIMINAL NO. H-298

FILED
AUG 22 8 30 AM '72
U.S. DISTRICT COURT
NEW HAVEN, CONN.

GOVERNMENT'S ANSWER TO DEFENDANTS' MOTION FOR BILL OF PARTICULARS

The defendants William R. Balog, Nicholas V. Lanese, Richard M. Lanese and Nicholas Messina, pursuant to Rule 7(f), Federal Rules of Criminal Procedure, have moved for a bill of particulars.

Rule 7(f) provides that the Court "may direct the filing of a bill of particulars". This motion is addressed to the Court's sound discretion and, therefore, is reviewable only for an abuse of discretion. Wong Tai v. United States 273 U.S. 77 (1927). The purpose of granting a bill of particulars where deemed necessary is to inform an accused of the charge against him with sufficient precision to enable him to prepare his defense and avoid surprise, and to enable him to plead former jeopardy. Wong Tai v. United States (supra). A bill of particulars is not a device to be used to uncover Government witnesses Nigro v. United States 422 F.2 502 (10th Cir 1969); United States v. Glass 421 F.2 539 (8th Cir 1969) nor is it a device by which the Government may be compelled to disclose its evidence in advance of trial United States v. Grisonn 271 F.Supp. 335 (S.D.N.Y. 1967) aff'd 426 F.2 107 (2d Cir 1969); United States v. Lebron 222 F.2 531 (2d Cir) cert. denied 350 U.S. 876 (1955).

1. In demand one the defendants seek the five persons with whom they conducted, financed, managed, supervised, directed and owned a part of the illegal gambling business. Section 1955 of Title 18, United States Code necessitates the involvement of five or more persons in order to constitute a violation. The instant indictment, charging ten individuals with the offense, should be sufficient to inform the defendants of the persons with whom they are alleged to have participated in the illegal gambling business.

2. In demand two the defendants seek the names and addresses of persons with whom they are alleged to have gambled. Again the indictment sets forth the individuals involved in the illegal gambling business. Seeking the disclosure of other persons who gambled with the defendants is viewed as an attempt to identify potential Government witnesses which is not a proper function of a bill of particulars.

3. In demand three the defendants ask for the exact days the gambling business had a gross revenue of $2,000. The subject indictment charges defined criminal activity for a sixteen day period which should be sufficient to enable the defense to prepare. See United States v. Politi 334 F. Supp. 1318 (S.D.N.Y. 1971).

4. In demand four the defendants seek the exact date, time and place on which the defendants did conduct, finance, manage, supervise, direct and own a part of the illegal gambling business and as to each date, time and place, the persons with whom the defendants committed the acts charged. The Government views this demand as seeking the prosecution's trial evidence which is not the proper function of a bill of particulars.

5,6. In demands five and six the defendants seek to know each defendants involvement in the illegal gambling business and the way the illegal gambling business violated Connecticut State law. The Government opposes these demands as evidentiary in nature and their limiting effect on the circumstantial evidence producible by the prosecution. See United States v. Kelley 254 F.Supp. 9 (S.D.N.Y. 1966) aff'd in part rev'd in part 395 F.2 727 (2d Cir.) cert. denied 393 U.S. 963.

Wherefore the Government requests that the defendants Motion for a bill of particulars be, in all respects, denied.

Respectfully submitted

STEWART H. JONES
UNITED STATES ATTORNEY

BY: John R. Tarrant
JOHN R. TARRANT
SPECIAL ATTORNEY

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid, to the attorneys of record in the case of United States of America versus William R. Balog et al Criminal Number H-298 on August 21, 1972.

John R. Tarrant

JOHN R. TARRANT
SPECIAL ATTORNEY

August 21, 1972
Dated

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
AUG 22 8 31 AM '72
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA

v.

WILLIAM B. BALOG
NICHOLAS V. LANESE
RICHARD M. LANESE AND
NICHOLAS MESSINA

CRIMINAL NO. H-208

GOVERNMENT'S ANSWER TO DEFENDANTS'
MOTION FOR DISCOVERY AND INSPECTION

The defendants William B. Balog, Nicholas V. Lanese, Richard M. Lanese and Nicholas Messina, citing as authority Rule 16 and 6 of the Federal Rules of Criminal Procedure and Section 3500 of Title 18, United States Code, have moved for discovery and inspection.

1. First the defendants ask for all written or recorded statements or confessions made by them. The Government will comply with this request and provide those statements described in Rule 16(a)(1). However, the Government objects to the production of reports, memoranda or other internal government documents made by the agents in connection with the investigation of this case. Rule 16(b), F.R.C.P.

2,3. Next the defendants request any logs, tapes, transcripts, records or dirtels of conversations intercepted by electronic surviellance. The Government agrees to make available to the defendants the tapes of recorded conversations and the monitor's logs.

4. In response to demand four the Government will make available the order authorizing and approving electronic surviellance in this case and the accompanying application.

5. In demand five the defendants seek the times, dates and number of intercepted conversations. The tapes of recorded conversations and the monitors notes, which the Government agrees to make available, should be sufficient for this demand.

6. In response to demand six the Government will make the pen register tapes available to the defendants.

7. In response to demand seven the Government agrees to make available to the defendant, if the Court approves, the periodic report to the judge issuing the interception order.

8,9,10. In response to demands eight, nine and ten the Government opposes the production of any reports from the issuing Judge (18 U.S.C. 2519(1)) reports from the Attorney General to the Administrative Office of the United States Courts (18 U.S.C. 2519(2)) and reports from the Director of the Administrative Office to Congress (18 U.S.C. 2519(3)) on the ground that they are not material to defense preparation.

11. In response to demand eleven the defendants are advised that surveillance terminated at approximately 8 o'clock p.m. on December 20, 1971 and inventory service (18 U.S.C. 2518(8)(d)) made on March 10, 1972.

12. In demand twelve the defendants ask for the results or reports of scientific tests or experiments made in connection with this case. The Government agrees to comply with this request pursuant to Rule 16(a)(2).

13. In demand thirteen the defendants seek the names and addresses of experts making the scientific tests. The Government opposes this demand as not within the scope of Rule 16. The scientific reports, however, will be made available.

14. In demand fourteen the defendants seek any search warrants and affidavits used in this investigation. On January 1, 1972 Federal search warrants were executed at Apartment 46, 3830 Main Street, Bridgeport, Connecticut for that premises and the person of William R. Balog; at 3765 Main Street, Bridgeport, Connecticut for the premises and the person of Nicholas V. Lanese and for the premises at 177 Walnut Street, Milford, Connecticut. It is the Government's understanding that a copy of each warrant was left at the respective premises. However, each warrant and accompanying affidavit is on file with the Clerk of the District Court at New Haven, Connecticut and are as accessible to the defendants as they are to Government Counsel.

15. In demand fifteen the defendants seek the names and addresses of all Government witnesses. The Government opposes this demand as outside the scope of Rule 16, F.R.C.P. See Nipp v. United States 422 F.2 509 (10th Cir 1970). United States v. Glass 421 F.2 832 (9th Cir 1969).

16,17. In response to demand sixteen and seventeen the Government will produce the statements and testimony before the Grand Jury of witnesses in conformity with Section 3500 of Title 18, United States Code - after they have testified on direct examination.

18. In demand eighteen the defendants ask for the criminal records of all Government witnesses. The Government opposes this demand on the grounds that a criminal record is an internal Government document and beyond the scope of discovery, see Hemphill v. United States 392 F.2 55 (8th Cir 1968); and that this is an indirect attempt to identify potential Government witnesses which is not

proper discovery. United States v. Birrell 276 F.Supp. 798 (1967).

19. In demand nineteen the defendants ask for the names of local or state police officers who participated in the investigation of this case. The Government opposes this demand as not being proper discovery matter under Rule 16.

20. In demand twenty the defendants ask for the time, date and location of any search warrant executed during the investigation of this case. The Government opposes this demand as not being proper discovery matter under Rule 16. In demand fourteen the defendants were advised of the execution of search warrants concerning their person and premises. With regard to any other search warrants it is the Government's contention that these defendants lack standing.

21. In response to demand twenty one the Government agrees to produce all exculpatory information pursuant to the rule in Brady v. Maryland 373 U.S. 83.

22. In demand twenty two the defendants seek the method of Grand Jury selection and the names and legal qualifications of each Grand Jury. The Government opposes this demand as not being within the scope of Rule 16.

Wherefore the Government respectfully requests that as to those items to which the Government objects and which fall outside the scope of Rule 16, F.R.C.P. the defendants' motion for discovery and inspection be denied.

Respectfully submitted

STEWART H. JONES
UNITED STATES ATTORNEY

John R. Tarrant

JOHN R. TARRANT
SPECIAL ATTORNEY

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid, to the attorneys of record in the case of United States of America versus William R. Balog et al Criminal Number H-298 on August 21, 1972.

John R. Tarrant

JOHN R. TARRANT
SPECIAL ATTORNEY

August 21, 1972
Dated

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

WILLIAM B. BALOG
NICHOLAS V. LANESE
RICHARD M. LANESE AND
NICHOLAS MESSINA

CRIMINAL NO. H-298

FILED
AUG 22 8 31 AM '72
U.S. DISTRICT COURT
NEW HAVEN, CONN.

GOVERNMENT'S ANSWER TO DEFENDANTS'
MOTION TO DISMISS INDICTMENT

The defendants William B. Balog, Nicholas V. Lanese, Richard M. Lanese and Nicholas Messina have moved to dismiss the subject indictment.

1. Initially the defendants argue that the instant indictment does not state facts sufficient to constitute an offense against the United States. Criminal Indictment H-298 recites all the elements necessary to constitute an offense under Section 1955 of Title 18, United States Code.

Next the defendant argues that the indictment fails to allege that the defendants do not come within the exceptions to Sections 23 and 24 of Public Act 865. Never has it been thought that an indictment to be sufficient, need anticipate defenses. United States v. Sisson 399 U.S. 267 (1970).

2. The defendants further argue pursuant to Rule 6(b)(1) of the Federal Rules of Criminal Procedure that notice was not given to them of the grand jury investigation. Notice, however, is not required to be given. See United States v. Barone 311 F.Supp. 496 (W.D. Pa. 1970). By its own terms Rule 6 applies to "a defendant who has been held to answer in the district court." Rule 6(b)(1), F.R.C.P.

3. Finally the defendants argue that Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which permitted electronics surviellance resulting in the obtaining of evidence in this case and Section 1955 of Title 18, United States Code, the violation charged, are unconstitutional. The provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. 2510-2520), permitting the interception of wire communications are constitutional. Cox v. United States 449 F.2 679 (10th Cir 1971): United States v. Becker 334 F.Supp. 546 (S.D.N.Y. 1971) aff'd United States v. Becker F.2 (Dkt. No. 72-1105) (2d Cir May 20, 1972) and Section 1955 of Title 18, United States Code is constitutional. United States v. Becker (supra.), Schneider v. United States F.2 (Dkt. Nos. 71-1393, 71-1572) (8th Cir April 12, 1972).

Wherefore, the Government respectfully requests that defendants'

motion to dismiss indictment be, in all respects, denied.

Respectfully submitted

STEWART H. JONES
UNITED STATES ATTORNEY

John R. Tarrant

JOHN R. TARRANT
SPECIAL ATTORNEY

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid, to the attorneys of record in the case of United States of America versus William R. Balog et al Criminal Number H-298 on August 21, 1972.

John R. Tarrant

JOHN R. TARRANT
SPECIAL ATTORNEY

August 21, 1972
Dated

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
New Haven

UNITED STATES OF AMERICA	)	
	)	
VS.	)	Criminal No. H-298
	)	
WILLIAM R. BALOG ET AL	)	

UNITED STATES OF AMERICA	)	
	)	
VS.	)	Criminal No. H-299
	)	
ROGER L. SPINELLI ET AL	)	

TRANSCRIPT OF PROCEEDINGS HELD ON
SEPTEMBER 25, 1972

Before: HONORABLE JON O. NEWMAN, United States District Judge

Austin M. Phelps
Court Reporter
644 Campbell Avenue
West Haven, Conn. 06516

Appearances:

For the Government

STEWART H. JONES, Esq., United States Attorney

ANDREW B. BOWMAN, Esq., Assistant U. S. Attorney

PETER A. CLARK, Esq., Assistant U. S. Attorney

JOHN R. TARRANT, Esq., Special Attorney
Crime & Racketeering Strike Force Office, Boston

For Defendants

THOMAS D. CLIFFORD, Esq., Federal Public Defender

HUBERT J. SANTOS, Esq., Asst. Federal Public Defender

J. DANIEL SAGARIN, Esq.

RICHARD T. MEEHAN, Esq.

CHARLES HANKEN, Esq.

THOMAS E. DARDANI, Esq.

ROBERT J. MICHAEL, Esq.

SIGMUND L. MILLER, Esq.

JOSEPH M. BROPHY, Esq.

JORDAN R. LUSTIG, Esq.

ANGELO P. COSTA, Esq.

THOMAS M. YUDITSKI, Esq.

Monday, September 25, 1972, 10:00 A. M.

MR. CLARK: If your Honor please, Mr. Bowman advises me that the first case, United States vs. Frank Kelly, will be this afternoon.

The next matter will be U. S. vs. Daniel Ricco. Mr. Tarrant of the Justice Department is here on this case.

MR. TARRANT: Good morning, your Honor. My name is John Tarrant. I am with the Strike Force out of Boston.

THE COURT: This is H-298?

MR. TARRANT: That is correct. Mr. Ricco is present in the courtroom and is represented by Mr. Sagarin.

MR. SAGARIN: Your Honor, in this matter Mr. Tarrant and I this morning discussed this case. I do not envision that this case will be a tried case. We do think we are in a position to work out a guilty plea. The only question which I have is one which is procedural.

Mr. Ricco is here for the first time for a plea today.

He does, to the extent made available in other similar cases, wish to preserve any appellate issues which may arise by reason of the fact that this was a wire tapping case.

I have told Mr. Tarrant that when those motions are filed, then we are beyond discovery and we don't have a bill of particulars motion because there has been a full disclosure of the file. It will not be necessary to re-argue those

motions inasmuch as we would agree to be bound by other arguments in the same case which are going forward today before another judge--I think before Magistrate Latimer.

The only question I have, being procedural, is whether we ought to enter a not guilty plea at this time, file the motions, or enter--and then perhpas have a short pretrial conference with the Court, and maybe come back later today and change the plea to--guilty is the way we anticipate this case to go.

THE COURT: Has the motion to suppress been filed?

MR. SAGARIN: No, your Honor. This is the first time this defendant has been in court.

THE COURT: Well, what is your intention? To file a motion or to simply adopt the position of other defendants in the case?

MR. SAGARIN: If it would be sufficient to adopt the position of other defendants in the case, that would be sufficient. If out of an excess of caution it would appear more proper to file written motions, I can do that within one day. No problem.

THE COURT: What is the Government's position?

MR. TARRANT: As to the preservation of the rights, your Honor, the Government has no opposition to that. I have talked to Mr. Sagarin. And it just boils down to a matter of procedure. And that is why we are consulting your Honor, to

see what your opinion is as to how we should proceed.

THE COURT: I would think all the Court of Appeals would care about is that they know with some definiteness what claims are being reserved. Now if the Government has no objection to this defendant pleading and reserving the right to attack the wire tap on appeal, on the basis of any claims made by other defendants in H-298, I don't know why that doesn't give the Court of Appeals as much of a record as if this defendant goes through the same filing of papers and all the rest.

MR. TARRANT: That would be agreeable to the Government.

MR. SAGARIN: It is agreeable to the defendant, your Honor; and so that we are clear that specifically the motions we are preserving are motions to suppress all evidence by reason of interceptions of oral communications of this defendant and co-defendant to the extent they incriminate this defendant; and motions to suppress based on lack of probable cause for the wire tap orders itself; and motions to dismiss the indictment on the grounds that the statute itself, section 1955, is beyond the Congressional power and is unconstitutional.

THE COURT: All right. So you want to preserve, for appeal, attacks on the indictment based on the constitutionality of the underlying statute, namely section 1955

of Title 18.

MR. SAGARIN: That is correct.

THE COURT: You want to preserve any attacks on the lawfulness of the wire tap based on whatever claims and whatever record in support of those claims are made by other defendants in H-298.

MR. SAGARIN: That is correct.

THE COURT: And that is what the Government agrees to?

MR. TARRANT: Agreed, your Honor.

THE COURT: All right.

MR. SAGARIN: Your Honor, and I suppose also, on this record, it ought to be clear on the record that the plea today is a result of plea bargaining with the Government; and that, at least in terms of the limits of sentence in this case, we have reached an agreement.

I am aware that in the similar case, United States against Romanello, this Court has represented to defense counsel that in the event--after reading the presentence report and becoming aware of what sentence the Court feels is a just sentence, it believes that the Government's agreed maximum is too low--it would allow the defendant to withdraw the plea.

THE COURT: That is correct.

MR. SAGARIN: All right. And so that it is also clear --the understanding that I have reached with Mr. Tarrant is

that, while I believe that this is an appropriate case for a suspended sentence--and that will be a matter open to the Court--the Government has agreed that it would prefer not to recommend anything, but if pressed by the Court it would recommend no more than three months.

And I have explained that to Mr. Ricco.

THE COURT: Well, let me be sure he understands this on the record.

You are Daniel H. Ricco?

DEFENDANT DANIEL H. RICCO: Yes, sir.

THE COURT: You are represented by Mr. Sagarin?

DEFENDANT DANIEL H. RICCO: Yes, sir.

THE COURT: Apparently, as the result of conversations between your attorney and the Government attorney, the Government has indicated that, if it was asked for a position at the time of sentencing, it would suggest that the appropriate sentence in your case would not be in excess of three months.

Do you understand that?

DEFENDANT DANIEL H. RICCO: Yes, your Honor.

THE COURT: Now I take it that that means a recommendation with respect to the sentence that might be imposed at the time of disposition; it does not place a limit on any amount of sentence to be suspended which might be imposed at a later time in the event there was a breach of probation?

(Defendant Daniel H. Ricco conferred with Mr. Sagarin.)

THE COURT: Just to illustrate the point, Mr. Ricco, if at the time of sentencing I decided that I could make a sentence within the Government's recommendations, such that the sentence was three months or less, there might still be a suspended portion of that sentence that might be a year, for example; and in the event that you violated the terms of probation, you would subject yourself to serving that portion of the sentence which had been suspended, and that portion may well be more than three months.

I am not saying it will be. I'm just saying that that is a possibility, even within the recommendation the Government is agreeable to make.

Is that clear to you?

DEFENDANT DANIEL H. RICCO: Yes, it is.

THE COURT: Do you have any questions about it?

DEFENDANT DANIEL H. RICCO: No.

THE COURT: All right. And you further understand that if, when I get the presentence report, I think that the appropriate sentence should not be within the recommendation of the Government, that is to say that it ought to be more than three months, then I would permit you to withdraw your plea at that time if that is what you wanted to do, and we would start back from this point.

(Defendant Daniel H. Ricco conferred with Mr. Sagarin.)

THE COURT: Do you understand that?

DEFENDANT DANIEL H. RICCO: Yes, your Honor.

THE COURT: And conversely, if I think that an appropriate sentence is within the Government's suggestion, that is to say, an immediate sentence of three months or less, then the plea would stand. You would not have the choice at that point of withdrawing it. Do you understand that?

(Defendant Daniel H. Ricco conferred with Mr. Sagarin,)

DEFENDANT DANIEL H. RICCO: Yes.

MR. SAGARIN: Your Honor, the question which was asked by Mr. Ricco, and I think, so the record is clear, was he understands what happens if the Court decides that the up to three months or no more than three months recommendation by the Government is not appropriate--he wants to be clear that it is still open to the Court to decide that anything less than three months, including a suspended sentence, is open to the Court.

THE COURT: That is correct.

But what I want to be sure Mr. Ricco understands is that if, at the time of sentencing, the sentence of this Court is within the recommendation of the Government, that is to say, anything less than a three-month sentence--either a three-month sentence or some lesser time or a suspended sentence--that in that event, that I determine

that is the appropriate sentence, the guilty plea stands.

DEFENDANT DANIEL H. RICCO: Yes.

THE COURT: For example, if at the time of sentencing they say, "Your Honor, if you recall a few weeks ago we recommended three months", and I say, "Yes, I recall it, and I think a two month sentence is appropriate"--for example--at that point it would not be open to you to say, "Well, now I'd rather plead not guilty and go to trial."

You understand that?

DEFENDANT DANIEL H. RICCO: Yes. I understand that.

THE COURT: All right. The defendant may be put to plea on the indictment.

DEPUTY CLERK THORNER: Does your client wish to waive the reading of the indictment?

MR. SAGARIN: He does.

DEPUTY CLERK THORNER: Criminal Action No. H-298--United States of America vs. Daniel H. Ricco. As to Count One of the indictment charging you in violation of Title 18 United States Code Section 1995 and 2, how do you plead?

DEFENDANT DANIEL H. RICCO: Guilty.

DEPUTY CLERK THORNER: Your Honor, Defendant pleads guilty to Count One of the indictment.

THE COURT: Now, Mr. Ricco, bearing in mind what I have said as to the Government's recommendation that they would make at sentence, with that in mind, is this plea voluntarily

entered by you?

DEFENDANT DANIEL H. RICCO: Yes, it is.

THE COURT: Has anyone made any threats or promises to you to get you to make this plea?

DEFENDANT DANIEL H. RICCO: No, your Honor.

THE COURT: You understand the maximum--

MR. SAGARIN: Your Honor, I think, so the record is clear, that the promises just related beforehand--

THE COURT: I prefaced it by saying, "Bearing in mind the representations that were made on the record this morning".

Now are you aware of what the maximum penalties can be for this offense?

DEFENDANT DANIEL H. RICCO: Yes.

THE COURT: What are they?

DEFENDANT DANIEL H. RICCO: Five years. Five years and $20,000.

THE COURT: Has anyone made any statement or promise of any kind to you as to what the sentence of the Court actually will be in your case?

DEFENDANT DANIEL H. RICCO: No.

THE COURT: All right. You understand that, if you wanted to, you have a right to a trial by jury, in which the Government would have to prove your guilt on these charges beyond a reasonable doubt to the satisfaction of all

twelve jurors. Do you understand that by pleading guilty you are giving up the right to a jury trial?

DEFENDANT DANIEL H. RICCO: Yes, your Honor.

THE COURT: All right.

Can the Government briefly set forth the facts it would rely upon to establish this defendant's guilt at trial?

MR. TARRANT: Yes, your Honor. The defendant stands charged with Section 1955 and 2 of Title 18 United States Code.

If the Government were put to its proof, generally this is what we would establish: That during the period which is charged in the indictment, that is, from December 17, 1971 through and including January 1, 1972, New Year's Day, the defendant Daniel Ricco utilized premises, 17 Overhill Road in Milford, Connecticut, to conduct a bookmaking operation.

In that establishment at 17 Overhill Road, he utilized a telephone 878-2312 to place and accept bets and wagers, to settle accounts, and to arrange for meetings for the making of pay-offs on wagers won and wagers lost.

The Government's proof would establish three elements in sustaining the indictment: First of all, that the operation conducted by Mr. Ricco, that is, bookmaking, was in violation of Public Act 865, the Connecticut statute. It is

that statute which underlies the indictment or the charge pending in the Federal Indictment.

The proof would further show that Mr. Ricco was not functioning in and of himself, that he was conducting this bookmaking operation with more than five other persons, who also stand charged with him in Indictment 298.

The proof would show that the concert of action, that is, Mr. Ricco acting in conjunction with the other defendants, was not that of a mere bettor or customer placing bets with other bookmakers.

Thirdly, the proof as put forth by the Government would show that, during the course of the period charged in the indictment, gambling business in which Mr. Ricco took part grossed revenue in excess of $2,000 on more than one day, within the period charged.

THE COURT: Can you just briefly summarize what your evidence shows this defendant did in connection with this offense?

MR. TARRANT: Well, first--

(Mr. Sagarin conferred with Mr. Tarrant.)

MR. TARRANT: Your Honor, insofar as Mr. Ricco is concerned, I think our proof would show that he accepted bets and wagers at the location that I previously mentioned, that is, 17 Overhill Road. That would be substantiated by physical evidence putting him in the bookmaking business,

through the use of electronic surveillance; that is, a wire tap on a certain telephone within this scheme or operation, we would show that he from time to time would lay off bets that he had taken in, with other persons in the operation, or that he would disseminate information that would be utilized in the conduct of a joint enterprise, that is, a gambling operation.

THE COURT: All right.

Mr. Sagarin, do you have any dispute with what the Government says it can prove about your client?

MR. SAGARIN: Your Honor, I don't think that anything the Government represented they would be unable to prove on the basis of the evidence which they have disclosed to me thus far.

I think as a matter of law the conspiracy charges and the nature of the statute can be confusing to a defendant, in that there are a number of people charged in the indictment.

THE COURT: That is part of the substantive offense, isn't it?

MR. SAGARIN: That is correct.

THE COURT: That is the only offense charged?

MR. SAGARIN: That is correct. But he is also charged with acting with all these people in concert. And, as the law is, as I understand it, it is not necessary that

the defendant know each and every one of those other defendants, nor the participation in that joint violation by each and every other defendant. And that is the only confusing part to the defendant.

I have explained it to him, but I do believe that the Government would be able to prove what they stated they would be able to prove.

THE COURT: All right.

Mr. Ricco, do you have any dispute with what the Government says they could prove against you?

DEFENDANT DANIEL H. RICCO: No.

THE COURT: All right. On those representations the plea of guilty is accepted and ordered recorded.

And I suppose I should state on the record in this case, as I have in others, that if the Court of Appeals should determine that they, for lack of jurisdiction or whatever reason, cannot give consideration to the issues that the defendant has endeavored to reserve, then I will permit the plea to be withdrawn, and we will go back to this point.

MR. SAGARIN: Very well. Thank you, your Honor.

The defendant has been released on a non-surety bond, your Honor. We would ask that that continue.

THE COURT: That may continue; and it will be continued for presentence report.

MR. TARRANT: H-299 for arraignment, Roger L. Spinelli.

THE COURT: What is the situation here?

MR. TARRANT: Your Honor, Mr. Spinelli, I believe, is before the Court represented by Mr. Sigmund Miller. Mr. Spinelli has received a copy of the indictment.

MR. MILLER: We waive the reading, if your Honor please.

THE COURT: The plea is to be not guilty?

MR. MILLER: Not guilty.

THE COURT: All right.

You are Roger L. Spinelli?

DEFENDANT ROGER L. SPINELLI: Yes, I am.

THE COURT: Mr. Miller represents you?

DEFENDANT ROGER L. SPINELLI: Yes, he does.

THE COURT: Are you ready to plead to the indictment?

DEFENDANT ROGER L. SPINELLI: Yes, I am.

THE COURT: All right.

DEPUTY CLERK THORNER: Do you waive reading of the indictment?

MR. MILLER: Yes.

DEPUTY CLERK THORNER: Criminal Action H-299--United States of America vs. Roger L. Spinelli, as to Count one of the indictment charging you in violation of Title 18 United States Code, Section 1995 and 2, how do you plead?

DEFENDANT ROGER L. SPINELLI: Not guilty.

DEPUTY CLERK THORNER: Your Honor, Defendant pleads not guilty to count one of the indictment.

THE COURT: Let me ask Mr. Tarrant. This case bears a Hartford number but apparently it is on the list here.

Are most of the defendants in this case from the southern half of the state?

MR. TARRANT: Yes, they are, your Honor. They are from the Greater Bridgeport area.

THE COURT: The alleged incident arises in the southern half of the state?

MR. TARRANT: Yes, sir.

THE COURT: All right.

How many defendants are there in this case?

MR. TARRANT: I believe in 299 there are sixteen, all told.

THE COURT: Sixteen?

MR. TARRANT: Yes, sir.

THE COURT: Is this the first to enter a plea?

MR. TARRANT: No, your Honor. Pleas were taken before Judge Clarie in, I believe it was, July. Mr. Spinelli's was put over because Mr. Miller was engaged at the time, and this is the first opportunity that we have had to bring it on for plea.

THE COURT: Has everyone else entered a plea?

MR. TARRANT: I was under the impression that they have. However, this morning I spoke to counsel for two of the defendants in this case, who informed me that they have not entered a plea.

So what I am going to have to do is to double check our records to make sure that they are brought before the Court for plea.

THE COURT: I would suggest that be done at the earliest possible time. And it needn't wait until the next criminal day.

MR. TARRANT: Very well, sir.

THE COURT: This matter started for plea purposes back in July. It ought to be concluded by now; so that they can come in any day this week as far as I am concerned, other than Wednesday. I have got to be in Hartford on three-judge court matters. But they ought to come in here tomorrow or Thursday or Friday.

MR. TARRANT: The fault lies with me, your Honor. I did not realize that it was the attorney's responsibility in the District to get the defendants before the Court. They had been summoned before the Court, and I thought that the Clerk's office would just notify them when the next date

was to come, and evidently--

THE COURT: Well, that might happen. But I just don't think we need to wait until the next criminal day.

MR. TARRANT: I will take care of it.

THE COURT: All right. Now what is the situation as far as motions, Mr. Miller?

MR. MILLER: If your Honor please, there are several down today, and Mr. Tarrant has agreed that they can go over. There are a couple of others to file. Also, there is certain information which I understand that the Government is ready to furnish to us, which we haven't received.

I know it will be the basis of further motions, in all probability.

MR. TARRANT: Your Honor, these motions are presently pending before Mr. Latimer this morning. They were brought on for hearing this morning.

THE COURT: Well, I have something of a hint that while they are pending before Magistrate Latimer they may end up before me.

Some of them may. I don't know exactly what the division of labor is going to be on that.

But I want to make one thing certain about motions in this type of case, which I have learned from recent but bitter experience; that is, Mr. Miller, that if you are going to file motions for discovery you should first take a look

at the motions already filed, and then simply indicate any numbered request you have in addition to those.

I want to avoid sixteen different motions coming in, all asking for the same information but with different numbered paragraphs and slightly different phrasings, leaving an astromomical combination of permutations around when it comes to ruling on them.

MR. MILLER: Unfortunately, your Honor, it is too late for this case. The motion has been filed some time ago.

THE COURT: Well, it may not be too late. It may have been filed but it may be there will have to be another motion before it is acted upon. There is no point in having sixteen separately-numbered motions when they are all looking for the same material.

MR. MILLER: All right, your Honor.

THE COURT: I will just tell you I am not going to go through that process again.

If there is something extra you want, I am not in any way precluding you from asking for it. But I just am going to preclude a pepetitious asking of the same material.

If you want what they want, just say you follow whichever motion serves your purpose. And if you want something in addition, than file your numbered request.

MR. MILLER: We will review all of our motions, your

Honor.

THE COURT: It seems to me, though, that since this matter has been litigated in this District now on a number of occasions, it shouldn't be too difficult, as a preliminary matter, for the Government to give you what in all likelihood they are going to be ordered to give you anyway, and to resist what in all likelihood they are not going to be ordered to give you, unless they wish to disclose a little more, which they may.

MR. MILLER: The Government has made a substantial disclosure, in all fairness, your Honor.

THE COURT: All right.

MR. MILLER: There are probably still a few points.

THE COURT: All right. Now is there any reason that you can't have your motions in and available for consideration within two weeks?

MR. MILLER: I believe so, your Honor.

On the other hand, as your Honor can appreciate, there may be a motion to dismiss based on other information that the other motions may generate.

And with that exception, we can certainly have the rest of them in within two weeks, possibly even the motion to dismiss.

THE COURT: Well, all right. If something comes up in the course of the discovery proceeding, you can be heard

on whether that gives you a new basis for attack.

MR. MILLER: Yes, your Honor.

THE COURT: But with exception of that, it would seem to me that the motions ought to be filed so that they can be heard two weeks from today.

MR. MILLER: They will be, your Honor.

THE COURT: All right.

MR. MILLER: Your Honor, I don't believe that Mr. Spinelli has been asked about his election for court or jury.

THE COURT: Well, he has a jury trial unless he waives it; so that he doesn't have to elect.

MR. MILLER: Thank you, your Honor.

THE COURT: You put him to plea, Mr. Thorner?

DEPUTY CLERK THORNER: Yes, sir.

MR. MILLER: Your Honor, the bond--Mr. Spinelli has been released in $2500 without surety, and that bond is satisfactory to the Government.

THE COURT: Very well. That may continue.

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MR. TARRANT: Your Honor, I have one other item under H-298--Daniel Levin. Mr. Hanken who is representing Mr. Levin is present in the courtroom, but has expressed a wish to talk to me. So could we hold this in abeyance?

THE COURT: All right.

(Pause.)

MR. TARRANT: Your Honor, Mr. Hanken has just informed me. I don't think we will have any further business before you on 298 at this time.

THE COURT: Has this defendant Daniel Levin, in 298, entered any plea in this case?

MR. HANKEN: I believe he has, your Honor.

THE COURT: He entered a not guilty plea?

MR. HANKEN: Yes, your Honor.

THE COURT: Well, what is the status of his case as far as motions?

MR. HANKEN: We filed motions, your Honor.

THE COURT: They have been filed?

MR. HANKEN: Yes, your Honor.

MR. TARRANT: Unfortunately, your Honor, I think you are going to find that in both 298 and 299 what has occurred is exactly what you did not want to occur.

Judge Clarie gave the defendants a timetable, which they met with sixteen different kinds of motions for the same thing. And so actually we have a big package of motions

presently on file.

THE COURT: He set the timetable but sent them down here to be decided.

MR. MILLER: That's right.

MR. TARRANT: That's exactly right. Yes, your Honor.

THE COURT: All right.

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(A short recess was taken in this matter.)

MR. TARRANT: Your Honor, going back for a moment to H-298 and H-299, the two cases that we spoke on this morning, the motions that were on file were scheduled to be heard by Mr. Latimer this morning at 10:00 o'clock.

Now I am informed that Mr. Latimer has informed counsel that they will be heard by yourself at 2:00 o'clock. And I know we do have some scheduling problems with some attorneys.

Does your Honor intend to hear that matter at 2:00 o'clock this afternoon?

THE COURT: I can hear it then or I can hear it now. If counsel are here and expected to be heard by the Magistrate, their motion was calendared for 10:00 o'clock this morning. Now that we are finished with this calendar we can go right ahead and take them up now.

MR. MILLER: Your Honor, may I ask a question? With regard to non duplication on motions, which do you suggest we use as the master? The first one filed?

THE COURT: Well, not necessarily. This isn't a question of priority of liens where we have to be strict on time.

I would think counsel can probably take a look at the motions--

MR. MILLER: You mean by agreement of counsel?

THE COURT: Yes. And start with what seems to be

the most comprehensive, and let that serve as the principal motion.

Then to the extent each of them has something in addition, they can say so. I don't care which one they tender as the flagship motion.

MR. MILLER: Thank you, your Honor.

MR. SANTOS: Your Honor, may I suggest that it might be possible to continue these motions until all defendants are represented? I haven't had a chance to communicate with all defendants' counsel. We have filed motions on behalf of two defendants, but I understand from this morning Mr. Flynn is entering an appearance.

Is that correct?

MR. TARRANT: When we get his clients arraigned he will be entering an appearance.

MR. SANTOS: I don't know the procedure, your Honor followed in the prior case. But it seems to me it would be best to argue them when all counsel are present, at one time.

THE COURT: Well, I am not so sure of that, Mr. Santos. These motions really present, at this point at least, nothing terribly startling. It may be counsel will come up with some wholly new issue. I don't mean to disparage the ingenuity of counsel. But it seems to me the indictment came down--when was it? Sometime in the spring?

MR. SANTOS: It was in June, your Honor.

THE COURT: In June. If motions have been filed and are calendared, we ought to take them up.

Now if other defendants haven't quite moved along to the stage where these are, we will endeavor to expedite them. And as they come into the case, again if they have something special to say, we will hear them.

But if we hear the motions, and the Government knows what it must disclose, then we can set time limits for that, and that will be available to all defendants. And it may be that, as counsel come in and plead their clients not guilty, they will find they don't need to make any motions.

If we just wait for everybody we are just losing several weeks, where the Government could be complying with discovery, which I understand will take some time in cases like this.

MR. DARDANI: Thomas Dardani for Mr. Suglia in H-298.

We went to the Bridgeport office to find certain things for compliance, and they weren't there--specifically, the application for the wire tap order.

That type thing.

I was wondering when we would be able to get that.

I am more concerned about that than the motions that were denied to us.

Do we have to wait until all these motions are argued

and then they will make it available to us?

THE COURT: Normally, that is no problem. I don't know.

MR. DARDANI: I think, because the file has been transferred all over the place, that we would somewhere--

THE COURT: If the matters were calendared for New Haven, the chances are the file is here today; is that not correct?

MR. TARRANT: Yes, your Honor. That is correct.

You see it is understandable, I feel, that some counsel, handling an electronic surveillance case for the first time, may not be aware that the materials they are now seeking are sealed and they are impounded, and therefore we can't just give them away until we follow certain procedures; first of all, having the papers unsealed.

And I have just asked for an agent to bring in the packages that Judge Blumenfeld sealed. And if it is in order, I could request the Court to order them unsealed at this time, and we could file them. And we could at least get disclosure of the electronic surveillance papers as of today.

THE COURT: That is all right. I think you may want written motions on that, to that effect, so that there is a fairly certain record.

MR. TARRANT: If that is the case, it would take me

day to get it typed, because my office is in Boston.

THE COURT: Oh, I think the U.S. Attorney's office here would accomodate you by typing up that motion.

Just a motion to unseal the ex parte application?

MR. TARRANT: What my motion would be, your Honor, is to unseal the papers that were sealed by Judge Blumenfeld on December 16, which was the application, the order and the affidavit; and then on December 21, when I made my five-day report, the return, etc., that is required.

THE COURT: That is a very short motion. It isn't even a motion. All you need to submit is an order that just calls for the unsealing, and then just lists what it is that is to be unsealed.

MR. TARRANT: All right. I can take care of that.

THE COURT: I think that can be done.

Why don't we do this? Apparently there are a number of counsel now in the building who expected to present their motions to Magistrate Latimer; is that right?

MR. TARRANT: That is correct.

THE COURT: Why don't we take a brief recess now; give counsel--I don't know if they are still before Magistrate Latimer on other parts of the case. I don't know exactly what division he made.

But let's take a recess. Try to have counsel, with the Government's assistance, straighten out what matters are

to be heard today. And when you gentlemen tell me you are ready, we can convene court and hear them.

MR. TARRANT: Very well.

THE COURT: And then you can present any unsealing order, and get that taken care of today, so they will know that before the day is out they will have access to those documents.

All right. We will take a short recess, and you gentlemen tell me when you are ready.

(At 11:08 A.M. a recess was taken until 11:40 A.M.)

MR. TARRANT: May it please the Court, I have a motion prepared which is actually three pages, the last paragraph of which is pertinent. What I have asked the Court to do, in writing, is to remove--or unseal the application, the affidavit in support thereof, and the order allowing the electronic surveillance in this case; and also the report I made to the Judge, the issuing Judge; the return of the monitor's notes that were taken contemporaneously with--

THE COURT: The what? The monitor's--

MR. TARRANT: The monitor's notes.

THE COURT: Who is the monitor?

MR. TARRANT: The monitor would be whatever FBI agent was assigned to monitor the machine as it engaged--

THE COURT: Is this the log?

MR. TARRANT: What is sometimes referred to as the

log, your Honor. Yes.

THE COURT: All right.

MR. TARRANT: In addition, your Honor, along with asking that they be unsealed, I have asked that these materials be filed with the Clerk of the Court for inspection and/or copying by the defense attorneys. And I have done that in deference to my making copies and handing them out to everyone.

I am submitting this at this time (handing paper to the Court).

THE COURT: Let me try and first understand what is before me at the moment.

Is this both 298 and 299?

MR. TARRANT: Yes, your Honor.

THE COURT: And in effect the motion calendar is in those two cases as it was before the Magistrate earlier this morning?

MR. TARRANT: That is correct.

THE COURT: Well, let me just inquire of counsel. First, have defense counsel had a chance to know from the Government what is going to be disclosed voluntarily?

MR. SANTOS: Yes, your Honor. The Government filed a response to the motion for discovery and inspection; so I have that response, and I believe other defense counsel also has the response.

THE COURT: Well, let me ask the Government. I assume you have my ruling in the Romanello case.

MR. TARRANT: I had a chance to peruse it a couple of moments ago. It is the first time I did see it. But I have taken a look at it.

THE COURT: Is your disclosure in this case along the lines of what I ordered in that case?

MR. TARRANT: Yes. I believe I did hold back somewhat--that your order in the Romanello case would cause me to disclose a little more than I had voluntarily agreed to.

However, having perused your decision, I certainly would go along with that decision in this case.

THE COURT: I don't want to foreclose you from arguing. If there is some point that you think you are entitled to object to in this case, I will hear you. But--

MR. TARRANT: I see no reason to belabor the point.

THE COURT: Oh, all right. Well, if that can serve as at least a ruling of what you <u>will</u> give--I am not saying it is necessarily <u>all</u> that the defendants are entitled to, although it is certainly some indication of where I think the line ought to be drawn.

But at least the defendants can assume that the Government will supply them with what was called for in the Romanello ruling.

MR. TARRANT: Yes, sir.

THE COURT: Well, does that simplify the task here? Can the defendants, in other words, simply focus on those matters that they either haven't got or won't get pursuant to the Romanello ruling? I would imagine that is a fairly limited area of disclosure.

MR. SANTOS: That is correct, your Honor. As I understand it, if we use the defendant Varvella's motion for discovery--

THE COURT: Is that in 298 or 299?

MR. SANTOS: 299, your Honor.

THE COURT: All right.

MR. SANTOS: As I understand the Government's response, there was objection to number 4, number 18, number 20 a partial objection to one and (b); 21, 24, 25, 26; and that is it.

Now in the Romanello case, with regard to the objection number 18, which is to supply all telephone numbers from which or to which oral or wire communications which were intercepted, and which any way relate to the present indictment were transmitted--your Honor, I believe, granted that request in the Romanello matter. I think you limited it to a degree, and so I don't think that should be a problem.

As far as 21(b) is concerned, that requests, "If the device was mechanical or electronic please identify

the manufacturer of such device, the year in which said device was made, and if the device was sold with written or oral instructions as to the operation of such device; and also the names of any persons who participated in the installation of the intercepting device."

And that was granted in the Romanello matter also; so that should be no problem.

Number 21, "State the names and addresses of all persons whose wire or oral communications were intercepted but who were not indicted", that was denied, I believe, in the Romanello matter.

Number 24, "Please state whether there was any non-electronic surveillance of the defendant, any co-defendants or any alleged co-conspirators."

Your Honor granted that, subject to a limitation. You defined surveillance to mean any communication where the speaker was unaware that a third party was listening--the so-called uninvited ear.

So that should be no problem.

And number 25, "Please state the means of identification of the participants in all intercepted wire or oral communication of the defendant, co-defendants, or any alleged co-conspirators not named in the indictment."

I believe that was also granted in the Romanello case.

Well, let me just back up on that.

That, I believe--part of that question, subsection (a) --"If there was voice recognition, please state the name of the person by whom such recognition was made."

I believe that was denied in the Romanello matter.

Number 2, that was granted--the make and manufacturer of the type of device that was used to intercept. And once again, the question of surveillance was limited to the uninvited ear situation.

Now 26, I believe, was denied. The Grand Jury minutes, number 26, was denied in the Romanello matter.

So that basically is it, your Honor.

THE COURT: In other words, as to the matters that were objected to, if the Government follows the decision in the Romanello case, which granted many of these, at least in some form--

MR. SANTOS: That is correct.

THE COURT: --the one you remain very much at issue on is 21.

MR. SANTOS: That is correct.

THE COURT: Well, all right. Do you want to be heard on that one?

MR. SANTOS: Also, number 4, I guess there is a problem on.

I don't recall whether that was granted in Romanello.

But in any event, if your Honor's ruling is going to

apply to all defendants in this matter, which I presume it is; in other words, the ruling on this--

THE COURT: Well, they are going to have the benefit of it. I can't limit absent defendants by the ruling.

In other words, any ruling in favor of discovery will apply to all. Any denials will sort of tentatively apply to all, but they will have the right to come in and be heard if they have got some special circumstances that apply to their defendant.

MR. SANTOS: My point is, if the Government agrees to disclose number 3--1, 2 or 3--and that applies to all defendants, then I suppose that all defendants will get copies of the disclosure, and we should know if there are any statements by co-defendants. In other words, 1, 2 and 3 asked for statements of any defendants.

THE COURT: I am not initially ordering the Government to make--how many defendants are there in this case?

MR. TARRANT: There are sixteen in this case.

THE COURT: I am not necessarily ordering them to make sixteen copies of everything that they disclose. It seems to me, first of all, that counsel have some obligation to confer among themselves--

MR. SANTOS: Yes.

THE COURT: --Government counsel and defense counsel--and see what can be worked out, to make a set of documents

available at a convenient place. Maybe it is necessary to have two sets available, one in the U.S. Attorney's office in New Haven and one in Bridgeport, for example.

But I am not going to rule on the number until counsel tell me they are just at an impasse on working out informal arrangements for opportunity to inspect documents.

MR. TARRANT: Your Honor, what I would like to do, if it is agreeable with the Court and with defense counsel--and that is, if I make available to one defendant a statement, his statement, so to speak--what I would propose to do is to also file an inventory of what I am disclosing, with the Court, and attach a copy of what I have turned over to the inventory. And in the event that all counsel do not see the statement that I give to the one defendant--at least it will be on file with the Clerk's office for inspection.

THE COURT: Well, that may work out.

Again, let's see how far we parties can just simply accept the sort of housekeeping arrangements the Government has in mind. And if you find you are just not given a fair opportunity to see a document, then you will have to ask for some further relief.

MR. SANTOS: Your Honor, I am willing--and I don't want to foreclose other defense counsel from arguing. But if it is agreeable to the Government that we follow the Romanello disclosure, which appears to be the case, then I am prepared

to follow that also.

THE COURT: All right.

MR. SANTOS: If other defense counsel want to argue the few matters that seem to be in dispute here--Grand Jury matters being one, the question of disclosure of the identity of persons not indicted--you know they are free to do so, of course. But my own feeling is that if the Government is willing to do that, we can agree on that course.

THE COURT: All right.

(Pause.)

THE COURT: All right. Then is there any other counsel that wants to be heard on some aspect of discovery and production?

(Pause.)

THE COURT: All right. Apparently not.

MR. COSTA: Angelo Costa. I am here for the defendant Woznick.

And we have had a conference. And it is my understanding that whatever items are ordered to be given on this motion will also be given for the benefit of Woznick. Is that correct?

MR. TARRANT: Not only--

THE COURT: They will be given for the benefit of every defendant in the case.

MR. TARRANT: Not only in the 299 case but also in

the 298 case. They are products of the same electronic surveillance; so whatever ruling applies to one defendant, I will take it as applying to everyone.

THE COURT: All right.

MR. COSTA: So that it won't be for us to file separate motions.

All right. Thank you. I just want to make that clear.

THE COURT: Perhaps I should express this caution. If something is being denied and you think you are entitled to it, and you want to reserve your right to appeal, it may be--I would think certainly--that you should have in the record your request for that. But you won't need a separate piece of paper just to get from the Government what the Government has said they are going to give to all other defendants.

MR. COSTA: I understand, your Honor. Thank you.

MR. BROPHY: Joseph Brophy. I represent the defendants Mr. and Mrs. Piazza.

On the question as to the minutes of the Grand Jury, I understand that you have already ruled against that in the previous case.

I would just ask the Court. In answer to a motion to dismiss, the Government indicates that even if the search warrant is held to be invalid and the evidence therein

suppressed, that that still does not foreclose it from going forward.

On that basis how is defense counsel to know what probable cause then exists for the arrest of the defendants unless we are able to obtain these minutes?

THE COURT: Well, I think that issue is a little premature.

I think if the wire tap evidence were suppressed--well, in other cases the Government has said they just don't have a case.

I don't know what their situation is here. But it seems to me that if the motion to suppress in this case is granted I will first want to know from the Government whether we have a case. If they tell me we do, at that point it seems to me I would hear counsel on any claims they would have at that stage of the litigation.

You may be right, that you would have a more compelling claim to see Grand Jury minutes if the wire tap evidence is suppressed.

MR. BROPHY: I see. Thank you.

THE COURT: All right.

Anything else on the issue of discovery and inspection?

(Pause.)

THE COURT: All right.

Now you have a bill of particulars?

MR. SANTOS: Defendant Varvella has filed in H-299 a bill of particulars, your Honor.

As I looked over the motions last evening, some of the other defendants filed different requests. In other words, the discovery motions are generally uniform. The bills of particulars are certainly different; so other counsel may want to argue their separate bills.

THE COURT: Well, let me ask defense counsel the same as on the discovery aspect. Can you agree that the Varvella motion is the one that is appropriate to be considered first, so that any additional claims you have are supplemental to it?

(Pause.)

THE COURT: Apparently that is agreeable. All right. Go ahead.

MR. MICHAEL: If your Honor please, I am Robert Michael. I represent defendant Walter Hardy in case 298.

I haven't had a copy of the other motions, your Honor, so I am not really that familiar with the Varvella motion. And I feel that there are certain particular items in my motion for a bill of particulars that would have to be--

THE COURT: You won't be foreclosed. I just want to know which one sort of has most of the requests so we can take that up first. And after you have heard the discussion

on this or had a chance to see the motion, if you have some additional ones, then you will be heard on your additional request.

MR. MICHAEL: Fine. Thank you, your Honor.

MR. SANTOS: I will read each request as we go along, your Honor, for benefit of defense counsel. The first request--

THE COURT: Presumably, some have been consented to, haven't they?

MR. SANTOS: Some, yes. I will indicate those.

As far as number 1 is concerned, wherein he requests the cities and the place within the cities, where the alleged violations occurred, there is no objection as to the cities.

So we press the question of the other places.

There is objection to number 2.

As to number 3 there is no objection as to the addresses--the address of the bookmaking business. There is objection as to the participants.

As to 4, there is objection.

5, objection.

6, objection.

7, no objection, as I recall.

8, objection.

9, no objection.

Well, as to number 1, your Honor, we would request the specific places within the cities that are set out in the answer to the bill of particulars. The Government sets out, I think, three or four cities where the bookmaking operation allegedly was in effect.

We would like to know the specific places within the cities. It doesn't help us very much in terms of pinpointing the activity, to simply know there is a particular city such as Bridgeport.

THE COURT: But realistically, you get the transcripts.

And unless this is a significantly different case from the others, the core of the case is the tapping, isn't it, Mr. Tarrant?

MR. TARRANT: Yes, your Honor.

A point of clarification in my position on number one: It isn't that I do not care to particularize the individual book locations where the participants were. I would do that.

But what I don't want to do in a bill of particulars is foreclose myself evidentiarywise. For instance, there were street corner meetings. There were payoffs at a Dairy Queen.

There are going to be situs involved--that I may not be able to particularize, and I don't want to box myself in.

And that is the reason that I took the stand I did

on point one.

THE COURT: Well, the transcripts are certainly going to tell you--well, transcripts plus the compliance with discovery--which telephones, and in whose name they were, and at what address. So you are going to know from that at what locations the Government alleges wagers were being received.

MR. SANTOS: I presume your Honor then denies--we are limited to the cities; is that correct? Is that your Honor's ruling?

THE COURT: I don't know whether I am going to rule on these orally. I will enter an order on all of them after we have seen what all the objections are and what all the claims are.

MR. SANTOS: With regard to number 2, as to the allegation "did unlawfully, willfully and knowingly conduct, finance, supervise, direct and own", we request the manner in which the defendant conducted, financed, managed, supervised, directed and owned. I think that the allegation is too sweeping for us to make.

I don't think it would harm the Government tremendously of he could get a little more specific on that request, your Honor. It is an awful sweeping characterization of defendant's activities.

With regard to number 3, "With respect to bookmaking

business alleged, state the address of such business", there is no objection to the address of the business.

And the names of the participants, in the business: Well, we feel we are entitled to the names of the participants. If there is a business enterprise going on, we would like to know exactly who was engaged in the business enterprise.

Now the Government may want to limit that to what defendants named in the indictment were involved in the business. Maybe all sixteen of them were.

But we would like to know all of the participants in the business activity.

THE COURT: What does that have to do, realistically, with knowing what the offense is and whether you could assert jeopardy, and things of that sort?

MR. SANTOS: Well, I am not sure at this point, you know, exactly how that is going to help us. But when there is an allegation of the bookmaking business activity, we would like to know the participants in the activity.

THE COURT: They have alleged sixteen, in any event.

MR. SANTOS: Well, obviously, we are looking for additional participants.

THE COURT: All right.

MR. SANTOS: The indictment also alleges violations of 18 USC 1955 and 18 USC, Section 2, the aiding and abetting statute. And as to the alleged violation, "State which were

in violation of 18 USC 1955 and which were in violation of 18 USC Section 2?"

That refers to the prior allegation.

We would like to know what--

THE COURT: You mean what the evidence segregated--as to what shows the substantive offense and what shows aiding and abetting?

MR. SANTOS: That is right, your Honor.

Now as to number 5, "As to the alleged violations of Public Act 865, what particular Acts of defendant violated same", as I recall the Public Act in the state of Connecticut, it sets out a number of activities that are considered to be gambling, illegal gambling activities, and other activities.

We would like to know specifically what acts in that Public Act the defendant violated. Simple reference to that Public Act does not help us very much.

And I think that it covers too broad a ground. I don't think it would hurt the Government's case or would limit the evidence that the Government can produce at trial if he could get more specific on the specific acts of the Public Act that were violated.

And with regard to number 6, your Honor, "As to bookmaking, designate the particular acts of the defendant which constitute same."

Now this, I think, can help us in terms of expediting this matter. I mean if defendant simply was placing bets and the Government considered this to be bookmaking; or the defendant was engaged in other types of minor activity and this was considered bookmaking; then I think that a motion to dismiss might be in order. In other words, I think that disclosure of this type of activity could help expedite. Not only would it make it more specific from our point of view, but might be able to expedite this whole proceeding.

THE COURT: Well, realistically, you could do that in any criminal case. You could say that rather than hear the Government's evidence at trial--and make a motion to dismiss, or make a motion for an acquittal at the end of the Government's case--if they told us this case ahead of time, then we could move to dismiss because they don't have enough.

MR. SANTOS: The term "bookmaking" you know, is quite nebulous.

What is bookmaking? Is a person accused of bookmaking who is taking--stopping off at various points, delivering bets to a central office?

THE COURT: Doesn't the Becker decision give you pretty good guidance?

MR. SANTOS: Well, it does. It does. And that is the reason I made my first--

THE COURT: It gives the line between betting and doing anything that helps those who accept bets, doesn't it?

MR. SANTOS: Well, it does. It does define it. But you know that goes back to my first point, why we would like the information now if in fact--

THE COURT: Well, I don't know. Maybe we can just ask Mr. Tarrant now and see if he cares to answer this.

Is there any defendant in this case whom the Government's evidence is going to show only that he is a bettor?

MR. TARRANT: No, your Honor. Otherwise, he wouldn't be a defendant in this case.

THE COURT: Well, then you know you are going to have to meet some evidence showing activity more than betting.

MR. SANTOS: Well, I didn't think you could dispose of it that easily.

But the term "bookmaking" itself, your Honor, I think is a little too general for the indictment. We would like to get it more specific as to the activity involved.

I mean the term "bookmaking" is a rather sweeping term. And for purposes of the defense we would like to see specifically. We are not asking the Government to enumerate each particular act the defendant was involved in. But we would like to know exactly what he did besides the phrase "bookmaking".

I think it is too sweeping.

THE COURT: Well, I am not clear whether your problem is with the term or whether you really just want to know what the Government's evidence is against each defendant. If it is the latter, that's not what a bill of particulars is all about. If it is just a question of knowing what they mean by bookmaking, I would have thought they mean accepting wagers.

Now maybe they mean something different.

MR. TARRANT: The acceptance of bets and wagers, the common connotation of the word "bookmaking".

MR. SANTOS: With regard to number 7, your Honor, "With respect to five or more people, state names and addresses of said people."

There is no objection to that, as I understand it.

Is that correct? No objection to that, number 7?

MR. TARRANT: Well, no, in that we claim that the more than five people were the defendants charged in the action.

THE COURT: Well, I suppose the inquiry is whether you are claiming that all sixteen are managing, conducting, et cetera, the business, or whether within this group of sixteen there is some lesser number who are managing, conducting, et cetera, the business--with the remaining defendants simply aiding and abetting this principal group

in the substantive violation.

MR. TARRANT: I think the latter is correct. The proof will show that as to the major operation the managing and directing is a small nucleus and that--

THE COURT: Well, is there objection to disclosing who of the sixteen are the ones who, apart from concepts of aiding and abetting, stand accused of committing the substantive offense?

MR. TARRANT: Well, I wonder--not to try to avoid the question. But does this not present me with the problem of "If I don't have five people that fall within the first category, and thereafter--you know--the bulk of the others are aiders and abettors, does the underlying charge then fall?"

THE COURT: Well, I think the defendants would want to argue that. I don't know that I want to rule on it right now. But if you came back with a response that only had four names, I suspect there would be a motion to dismiss.

MR. TARRANT: I understand. But the aiding and abetting makes the aider and abettor guilty as a principal, as the principal operator himself.

THE COURT: Makes him as guilty as the principal. Then again, I don't want to rule on this now. But doesn't the concept of aiding and abetting carry with it the implication, and a necessary ruling, that there is a principal?

MR. TARRANT: Absolutely, absolutely.

THE COURT: Then wouldn't it follow that if the crime requires certain things to be done by five people, that a person couldn't aid and abet that crime unless five people had done whatever the statute defines as criminal? Then once the five are there, the sixth--who is the aider and abettor--is guilty as a principal. But he doesn't become guilty as a principal until there are five who are guilty as principals.

At least that is the argument.

MR. TARRANT: Yes. I understand that. And that is the reason that I didn't want to particularize myself into that evidentiary situation.

I would oppose that particular at this time.

THE COURT: All right.

MR. SANTOS: And lastly, your Honor, number 8, which refers back to 7: "With respect to the five or more people, state the manner in which said people conducted, financed, managed, supervised, directed and owned the part of said business."

THE COURT: Well, that's pretty evidentiary, isn't it?

MR. SANTOS: Well, obviously I would say it is evidentiary. But I think that we should have a little more direction in the bill of particulars than we have with that kind of sweeping allegation. It most certainly is evidentiary. But that is an awful general kind of allegation. I think

you can get more specific without the Government having too many problems--similar to some of the other matters that were requested.

THE COURT: Well, of course again, the answer to so much of this is that you already get so much more evidence in a case of this sort than you get in a normal criminal case, because probably 90 percent of the Government's evidence is going to be before you in the form of a written transcript of the conversations. So you are going to have all sorts of evidence of what they claim shows that your clients managed, conducted, et cetera, the business.

MR. SANTOS: With regard to number 9, your Honor, there is no objection to number 9, so I don't think we have any problem with that.

Other defense counsel may want to argue their particular bills.

THE COURT: Well, now before I turn to other counsel, let me just work out a scheduling problem; because I have got to take an earlier than usual lunch recess today. I will resume later on.

How many matters here are going to require a record?

I take it there are going to be a few matters of bill of particulars that other counsel have.

Now other than particulars, what motions are going to need presentation?

I take it the motions to suppress are not ready.

MR. COSTA: Of course, motion to suppress and motion to dismiss, I suppose, are going to depend in great part upon what we obtain from--

THE COURT: That is right. So we don't have to deal with that at this time.

MR. COSTA: And as long as we are not precluded from filing those motions subsequent to receiving information which the Court may order, there is nothing further at least that Defendant Woznick is interested in at this time.

MR. SANTOS: There is a motion for severance, your Honor, that was filed by the Defendant Varvella. That might be more appropriate--I suppose we could argue it now--it might be more appropriate at a later date, also.

THE COURT: I would think after you have seen the transcript--

MR. TARRANT: Not only that, your Honor. I think that counsel would also like to see any statements that I might disclose, for the purpose of motions under Bruton. That might be the best time for severance then.

THE COURT: All right. So then really the only thing that needs to be dealt with today is other bill of particulars aspects. Are there many counsel who want to be heard on that? I just want to know how to schedule this.

(Pause.)

THE COURT: All right. Well, if it is only one, let's go ahead with it. Let's hear you first and then see who else. If it is going to take time, I will have to carry it over till two.

MR. COSTA: I just want to say, your Honor, that I do have a motion for severance down for today in regard to the defendant Woznick. And I assume that is going to go off without prejudice.

THE COURT: Well, I think it will probably go over; or that you don't lose anything.

MR. LUSTIG: Your Honor, my name is Jordan Lustig. I represent Edward Stoll. I did not file a motion to dismiss, pending receipt of certain information. However, I did file a notice of my intention to file a motion to dismiss at a later date. I note that that is marked on the docket for whatever value it is.

I just want to make sure I wouldn't be precluded from filing this motion to dismiss after I had an opportunity to examine what the Government is going to give us by way of motion for discovery regarding the wire tap.

Would you prefer that I file that motion in advance and have it on file?

THE COURT: No. There is no reason to, particularly since the grounds of the motion may well be based on what is in the disclosure. But I think that any motions generated

by the Government's compliance with disclosure orders ought to be filed within a week after receipt of the Government's disclosure.

MR. LUSTIG: Thank you.

MR. MICHAEL: If your Honor please, I represent Walter Hardy in Case No. 298. And my motion for bill of particulars contained ten items.

The first is the precise manner in which the defendant Walter T. Hardy allegedly committed the crime charged in the indictment, and the exact date or dates of such alleged criminal act or acts.

The Government has refused to answer this.

There are six parts of the particular crime involved. They include the verbs "conduct", "finance", "manage", supervise", "direct" and "own".

I am asking the Government to tell me which one of these things Mr. Hardy did.

Questions 2 through 7 of my bill of particular segregates each one of these verbs and asks the Government to tell me specifically how, or the precise manner in which, the defendant allegedly conducted, et cetera, each one of these verbs as a part of the illegal gambling business.

And my purpose is to pinpoint the Government in identifying how this particular defendant violated this particular crime.

Question 8, or item number 8, refers to the language of the Connecticut law in which he is alleged to have violated Sections 23 and 24 of the Public Act here cited by the Government. I could read the law, too.

But just for an example, in Section 23 there are seven verbs which are includable offenses, there are seven nouns in the objective case which follow these seven verbs, and there are five more verbs which describe the seven objects. So that it is quite a broad statute, your Honor.

I would wish the Government to identify which part of the Connecticut law is alleged to have been violated by Mr. Hardy.

My item number 9 in the bill of particulars is, "State the exact dates that a gross revenue of $2,000 in any single day was made, and by whom such revenue was made."

This is another element of crime, your Honor. And if the Government is unable to provide that information, there is no crime. So I think this is a very integral part that must be identified by the Government with particularity.

Those are my only comments.

Item number 10 concerned the naming of the five persons, but that was gone over before.

THE COURT: All right. Are there any other matters that are not already at issue?

MR. YUDITSKI: If your Honor pleases, my name is Tom

Yuditski, and I represent the defendant Colangelo, and have not filed a motion for bill of particulars. I ask the Court that the Government's compliance in respect to the defendant Varvella be also allowed to the defendant Colangelo; or in the alternative that I be allowed to reserve time to file a motion for bill of particulars.

THE COURT: Well, let's understand this. I am assuming that, what the Government will respon for one defendant, they will give the corresponding information to all defendants.

MR. TARRANT: That is correct.

MR. YUDITSKI: Thank you.

THE COURT: Any other matters that haven't been dealt with?

MR. MEEHAN: May I ask to be heard?

With regard to the defendants Richard Lanese, Nicholas Lanese, William Balog and Nicholas Messina, I had filed a motion for bill of particulars. There was some compliance by the Government. There were some objections to some of my requests. I have also a motion to dismiss which I have filed. There is objection to that by the Government.

And I filed a motion for discovery, and there has been some compliance by the Government and some objection. And I am present to argue the bill of particulars--motion

for bill of particulars.

THE COURT: All right. On the bill of particulars is there any matter you want to be heard on that you don't think has already been adequately covered by counsel who have already--

MR. MEEHAN: I wasn't present, your Honor, when the other counsel spoke on behalf of their claims, but I would like to be heard on the motion for bill of particulars and discovery, on a couple of matters if I might have just a minute to get my file.

THE COURT: I think what I will do is this, as I am already over a deadline now.

Mr. Tarrant, will you be here at 2:00 o'clock?

MR. TARRANT: Oh, yes, your Honor.

THE COURT: Then I think, counsel, I will ask you to just--after we rece[illegible]-- consult with Mr. Tarrant, and find out what things the Government is agreeable to disclosing. It may solve most of your problems. If matters remain I will hear you at 2:00 o'clock.

MR. MEEHAN: Thank you.

THE COURT: All right.

Now, Mr. Santos, there is a defendant who was to be put to plea; is that right?

MR. SANTOS: Yes. They brought him back in there.

THE COURT: All right. Well, perhaps we can do that

at 2:00 o'clock.

MR. COSTA: May I just ask one more thing, if I may, your Honor?

In regard to the items which can be inspected, will they be available in Bridgeport or at New Haven?

THE COURT: That is something I hope counsel can work out with Mr. Tarrant, either to agree which place is most convenient--if two locations are needed, maybe you can work that out. Maybe you can get by with one. But I think you ought to try to work that out with Government counsel first. If you have a problem, let me know at 2:00 o'clock, if it is just that you are at an impasse. If that matter needs a ruling it will get a ruling.

MR. COSTA: Thank you, your Honor.

THE COURT: All right. Recess till 2:00 o'clock.

(At 12:25 P.M. a recess was taken in this matter until 3:30 P.M.)

1972

3:30 P.M., after recess in this matter.

THE COURT: Which defendant do you represent?

MR. MEEHAN: If your Honor please, I represent four: William R. Balog, Nicholas Lanese, Richard Lanese and Nicholas Messina. And they are all in Criminal No. H-298.

THE COURT: You have filed a motion for bill of particulars?

MR. MEEHAN: Yes, I have, your Honor. And I filed a motion for discovery and a motion to dismiss.

THE COURT: Have you straighted out with Mr. Tarrant as far as discovery?

MR. MEEHAN: With the exception of one or two, your Honor. But could I just ask the Court this? It is agreeable to the Government, and I would like to have my motion to dismiss the indictment go off without prejudice at this time. And there is no objection by the Government. May that be done, your Honor?

THE COURT: All right.

MR. MEEHAN: Secondly, on the motion for discovery--

THE COURT: Well, just on the motion to dismiss--in case you weren't here when we dealt with this earlier this morning--those motions should be submitted within a week after the Government has complied with the disclosure. In other words, they are not going off with leave to renew at any time. They can be renewed within a week after the

Government has complied with disclosure orders; so that once you see the basis for attacking the indictment you will file your motion.

MR. MEEHAN: As I understand it, the records of the intercept are to be available to us at the Clerk's office in Bridgeport. Am I correct in that, your Honor?

THE COURT: I don't know where they agreed they would be. There was certainly agreement that they will be furnished to you or made available to you. Now which location counsel agreed on, I don't know. But that is something I think you can work out with the Government.

MR. MEEHAN: All right.

THE COURT: You will clearly have an opportunity to review those materials.

MR. MEEHAN: Thank you.

Then the other matter is in the discovery motion, your Honor. As to (1) it has been complied with by the Government.

(2), they have agreed to comply.

THE COURT: If you can, just tell me those items that really remain in dispute.

MR. MEEHAN: All right. 5 there is a dispute on.

8, your Honor, there was objection by the Government but that has been resolved, so that can go off.

9 and 10, we are withdrawing our request.

THE COURT: Is this your motion for discovery?

MR. MEEHAN: Yes.

THE COURT: For Defendant Colangelo?

MR. MEEHAN: No, your Honor.

THE COURT: Oh, I am sorry. I have the wrong file.

MR. MEEHAN: And for all defendants the motions are the same, your Honor.

THE COURT: Balog.

MR. MEEHAN: Balog and Messina and Nicholas, Richard and--

THE COURT: All right. You said number 5 was the first one that was disputed?

MR. MEEHAN: Yes. Number 8, your Honor, that has been resolved. So there was no opposition by the Government.

We are not going to press 8, your Honor.

We are not going to press 9 or 10.

Those can go off.

There is objection by the Government to 13, 15, 18.

19 we have resolved, your Honor.

And 22 we are withdrawing.

THE COURT: All right. Anything else on the discovery motion?

MR. MEEHAN: No, your Honor.

Your Honor, in regard to 15, rather than argue it, may I just give the Court a citation?

I would like to cite Gregory vs. U.S., 369 Fed. 2d 185, 188.

THE COURT: For compulsory disclosure of all witnesses?

MR. MEEHAN: Yes, your Honor. I admit that in the Gregory case, your Honor, it was a situation where there were charges of a robbery, a second robbery in which a death occurred, making it a murder by felony.

But I think the reasoning in the Gregory case would apply despite Section 3432, even though this is a non-capital case. The language of the Gregory case seems to indicate that in the interest of due process and fundamental fairness that the names and addresses should be revealed.

THE COURT: All right.

MR. MEEHAN: As to 18, your Honor, we are asking for the criminal record, if any, of all witnesses the Government intends to use against the defendant at the time of trial. And the Government has cited the case in opposition, which is Henfeld vs. U.S., 392 Fed. 2d at 45. And it is true in the Henfeld case, your Honor, they just denied that request without giving any reason. They say that the request is without merit.

But I would like your Honor to consider a State case. I know you are not bound by it, but I think the logic in it by Judge Armentano in the Superior Court is worthy of note. And this is State vs. Bowden. It is in 28 Conn. Supp.

And in the Bowden case, your Honor, Judge Armentano granted such a request, recognizing that it is an important tool for impeachment purposes for the defense, to give the defense the criminal record, if any, known to the State Prosecutor, after the witness has testified at trial.

THE COURT: Let's understand. What is the Government's position on that item?

MR. TARRANT: Your Honor, I thought he wanted the records now.

THE COURT: The request says at trial.

MR. TARRANT: As in the case of 3500 material, I will provide it.

THE COURT: All right. So that is not in dispute, then.

MR. MEEHAN: We will agree on everything else in discovery, your Honor.

THE COURT: All right. What about the bill of particulars?

MR. MEEHAN: In the bill of particulars the Government is opposed to 1, 2, 3, 4, 5 and 6. And there are only six requests.

THE COURT: Well, aren't these the same matters raised by the other defendants?

MR. MEEHAN: I don't know, your Honor. I wasn't present when the other counsel argued.

THE COURT: All right. You want--

MR. MEEHAN: I would like to give you the citation, please.

THE COURT: All right.

MR. MEEHAN: I would like to cite U.S. vs. Tucker, 262 Fed. Supp., page 305. It is a Second Circuit.

And also, your Honor, U.S. vs. Withers, 303 Fed. Supp. 641. It is a Northern District of Illinois.

In the Tucker case, your Honor, Southern District of New York, request was made for the name of the person with whom it was claimed that the alleged acts of narcotic distribution were actually committed; and the names of all persons taking part in the transactions, name of the person or persons who physically handled the consideration, the name or names of persons whom the heroin was allegedly handed to.

And the Court granted an order pursuant to Rule 7(f)--

THE COURT: Well, I know. But that is quite a different situation. That is where you just have an allegation in the indictment of selling narcotics and you don't know any more about it than that.

Here the allegation in the indictment is that your client was in business with fifteen other people, so right away you've got fifteen names. And in second place, you have got the transcript of the tapes that shows you the

overwhelming bulk of the evidence.

MR. MEEHAN: If your Honor please, if I knew that the Government was just going to rely on the persons named in the indictment, then I would have no more concern. But it is quite conceivable here that they might go beyond the persons named in the indictment, and because this is a gambling--

THE COURT: Well, they might. But it is one thing in an isolated narcotics transaction, where the defendant may have no idea what they are even talking about. Presumably he is innocent and he just doesn't know, so they have to tell him, "This is the person we say you bought it from or sold it to."

But your client right away knows fifteen names of people he is supposed to be in the gambling business with.

It may be there are twenty others, too. But he has already got a pretty good idea of what the Government says they are going to prove.

MR. MEEHAN: But, if your Honor please, the intercept here was for four days. And we are going to see the transcript, the tape.

THE COURT: Right.

MR. MEEHAN: But if your Honor please, that doesn't preclude the Government.

THE COURT: No, it doesn't. But it alerts your

client to a great deal more than he has in the normal isolated narcotics sale cases.

MR. MEEHAN: Right. But as to 3, though, your Honor, the Government has indicated in their response that they are charging them with committing this crime within a sixteen-day period. The tap is only on for four days. So if the Government is going to have witnesses--say Fedders, for example, they won't necessarily be identifiable in the four-day tap. And we should know those in order to properly prepare defense here. And this is why I make the inquiry.

I would be satisfied if the Government said, "Our case is resolved around the ten people named in the indictment and those identified on the tape or the intercept."

But it is quite conceivable that they could go beyond that. They are talking about a sixteen-day period in which this was allegedly in operation and could conceivably involve people beyond the four-day period.

In 2, your Honor, we want the names and business addresses of those persons with whom the defendant is alleged to have gambled in the course of conducting said gambling business. And there again, your Honor, this isn't necessarily confined to those whom he allegedly conducted, financed, managed. We are asking for any persons who might be bettors--in order to show, under the element of the indictment, that this is an illegal gambling activity.

THE COURT: You want them to name every person whom they are going to prove has bet with your client?

MR. MEEHAN: If they are going to produce that person at trial.

I am not asking for the whole investigation, your Honor. But you know, if they intend to come up with some person at trial, as an offer of proof, trying to prove an element of the indictment, that is, gambling, gambling activity.

3, your Honor, I think states the exact day or days upon which the defendant alleges--or the United States Government alleges--that gambling business had a gross revenue of two thousand. There, again, we will get a lot of information in the four-day intercept. But again, the Government is talking about a sixteen-day period; and they have expanded it by their answer beyond the four-day wire tap.

I would think, your Honor, that if they are going to claim that the tap was on from the 17th of December until the 20th, and they are going to claim that the defendants allegedly were involved or engaged in this conduct on the 22nd or the 23rd, we should know that.

THE COURT: Doesn't the indictment bracket certain dates when the business is alleged to have been conducted?

MR. MEEHAN: It is from the 17th day of December, '71 up to and including the first day of January, '72.

So we do have a period beyond the four-day wire tap period, your Honor.

From the defense standpoint that could be very important in there for one of the defendants, if the defendant has an alibi in that he was in another--

THE COURT: But you know the time period that they are going to say this business was conducted.

MR. MEEHAN: Right.

THE COURT: And you want to know which days within that time period a lot of business was done?

MR. MEEHAN: Yes.

THE COURT: Oh, I don't know that that necessarily makes it any more precise for you to plead jeopardy. You have been given the time period. And once this case is disposed of, it would be pretty difficult for the Government ever to come back and charge your client in this time period with this activity.

MR. MEEHAN: Well, if the Government is going to prepare its case for the 23rd or 25th of December, or 26th, I don't think that is too great a burden to place upon them, to indicate that to the defendants.

THE COURT: The test isn't whether it is burdensome on them. The test is whether the defendant needs it for the normal purposes of a bill of particulars.

MR. MEEHAN: I don't think it limits the Government

in its offer of proof, either.

THE COURT: It may not.

MR. MEEHAN: 4 is similar to 3, your Honor. We want the date, time and place in which the United States alleges the defendant did "conduct, finance, manage, supervise, direct and own a part of said gambling business".

I did see in one of the other defendants--I believe it is the case of Levin--I think in that answer that the Government--I think--provided Levin with the alleged place of the violation.

And this is what we are asking for--2 in addition to 3.

THE COURT: Anything they supply to another defendant, they have already indicated they will supply to all defendants.

MR. MEEHAN: 5. We want the United States to state in which way the defendant did unlawfully, willfully and knowingly commit the various elements under the statutes.

As I understand it, if the Government were to prove one of the number of each of those elements, that would be sufficient proof for conviction, together with the other elements.

And there is a diversity between conducting and managing and directing and owning. And what we are asking is that the Government take a position here. What do they claim against Nicholas Lanese, or against which ones?

THE COURT: This is not phrased as a motion to elect.

You have asked for a particularization of the way in which they say the offense was committed.

MR. MEEHAN: Right.

THE COURT: Well, that just asks for their evidence, doesn't it?

MR. MEEHAN: Yes, it does, in a way, your Honor. But I think that there again, because of the number of elements in the statute, that it would just that much more alert the defendant to properly defend here, on the element that the Government has selected. It might proceed on all of them. I don't know.

But if it is going to rely on one--like conduct the business or manage the business--then we make that request that we should get that.

THE COURT: All right.

MR. MEEHAN: Now 6, your Honor, is, "State in what way said gambling business is in violation of Public Act 865, Section 23 and Section 24."

And as you are aware, your Honor, Public Act 865 is the Act for the Special Commission on Special Revenue. And by creating the so-called legalized gambling in Connecticut, for the State of Connecticut, the Legislature placed within the 865 the old policy playing and pool selling statutes

53295 and 53298.

And there are a number of exceptions under 865, which permits gambling and doesn't necessarily make it a crime.

For example, if you are licensed by the Commission on Gaming you can accept bets and wagers on--

THE COURT: Well, if that is in this case you are going to have a pretty good defense, aren't you?

MR. MEEHAN: Yes. But they are alleging that in the indictment, your Honor, that--

THE COURT: All right. But they are saying that your client did something in violation of the State gambling statutes.

MR. MEEHAN: Right.

THE COURT: So obviously, you are not going to have to meet any claim that he is running a state lottery.

MR. MEEHAN: Well, I think their objection, your Honor, is that whatever affirmative defenses--oh, I'm sorry. They oppose it, that these demands are evidentiary in nature.

But our position is, your Honor, that the Section 23 and Section 24--a violation per se--is not a crime.

When the Legislature changed the statute in '69 or '71--I forget the exact date now--but they put within those two sections--

THE COURT: They said some things are legal and some things are illegal.

MR. MEEHAN: "Except as authorized in this chapter", meaning the whole 865.

And there is provision for charitable organizations to conduct gambling; and even provisions, as your Honor is aware, for off-track betting, that hasn't been--

THE COURT: Isn't it as simple as this, that you can safely assume that what they want to show is your client did something that is illegal under State law?

MR. MEEHAN: Yes.

THE COURT: You don't have to worry about things that are legal under State law.

MR. MEEHAN: But what we are asking them is to file a bill of particulars and allege in what way.

THE COURT: And that is what is evidential. You want to see their evidence.

MR. MEEHAN: Not necessarily, your Honor. We are asking them to particularize under 865, which it is our claim they must do in order to show a crime; that they just can't cite the whole statute. There is any number of sections to it.

We are saying, 'What way, under Section 865, Section 23 and 24? Because there is any number of conduct that is gambling but there are other sections which say that this conduct is not a crime.

THE COURT: Those sections of 865 that make gambling

lawful, obviously you don't have to worry about those. That is just not going to be part of their case against your client.

So all you have to worry about is the parts of the statute that make certain kinds of gambling illegal.

MR. MEEHAN: But not to belabor the point, your Honor, what I am saying is that I think it is incumbent on the Government, where they are relying on 23 and 24 under 865, that they specify in what way the conduct was unlawful under the Act.

THE COURT: Well, all right. I understand your point.

Anything else?

MR. MEEHAN: That is all I have.

THE COURT: All right.

MR. TARRANT: If your Honor please, this morning I filed with you a motion to unseal certain papers that had been impounded by Judge Blumenfeld.

In order to expedite discovery procedure that I talked about this morning, I was wondering if the Court would allow me to hand up the sealed materials.

The presence of the seal, I believe, under the statute, is a prerequisite for admissibility, at least insofar as, say, the tapes are concerned.

I have the package that was sealed on the 16th of December by Judge Blumenfeld, and the package that was sealed

on the 21st of December; the first containing the application and the order and the affidavit; and the second containing the return--the agent's return, my five-day report--and I believe the monitors--the logs, what we call the logs--although I am not sure whether they are here or with the tapes.

And I also have the original letter of authority that was sent to me by the Department to make the application, which is dated December 15, 1971. And I have Judge Blumenfeld's order directing me to serve on certain persons intercepted the inventory.

So if I may, may I pass these to the Court, and may they be filed under the H-298 and 299 (handing papers to the Court)?

THE COURT: Well, you have got a series of documents in each of these sealed envelopes?

MR. TARRANT: There are several documents in each envelope, yes.

THE COURT: Well, I suppose, then, the Clerk ought to mark each of them as a Court exhibit in this case. And then they will be part of the Court file and available for inspection.

MR. TARRANT: All right. And I do have some other items that I indicated I would make available. And these are the transcripts.

THE COURT: Well, those don't have to be exhibits at this point, I take it.

MR. TARRANT: Well, what I would like to do is, I would like to lodge them so that they may be available for inspection. The attorneys do anticipate my placing them with the Clerk of the Court.

THE COURT: All right.

MR. TARRANT: Now I have marked on the face cover of each transcript the date and the day, the telephone to which they apply, and the case. And this case--this package applies to H-298.

This package applies to H-299.

There are no numerical numbers on them for identification. Right. That is 299. That is 298.

THE COURT: Do you have an unsealing order, or do you want me just to endorse the motion?

MR. MEEHAN: If you would just endorse the motion--

THE COURT: All right.

MR. MEEHAN: --and then we also make that motion a part of the Clerk's file.

(The paper referred to was then signed by the Court.)

MR. TARRANT: Now, your Honor, I will return at a later time with a box of tapes. The reason I didn't bring them today was that we are going to have to work out a vehicle. I do not want the defense attorneys playing the

originals, for fear they would be altered. So we are going to have to work out a vehicle so that we can duplicate them and then make them a copy.

THE COURT: Well, that's what we have done in the past. We have had a duplicate tape which they have heard. And then, at some point, the original was unsealed. The defendants were given notice when it would be unsealed, so they could have an expert or themselves present if they wanted, and would have an opportunity to hear the original.

MR. TARRANT: Well, in this particular case, what we are going to have to do is unseal the originals and duplicate them, and then perhaps seal them up again. But even for the Government's duplication we will have to get to the original tapes, and I will arrange for us to do that in the near future.

THE COURT: Well, you may want to give notice of when that is going to happen.

MR. TARRANT: Very well. I will follow the procedure that Mr. Coffey followed in the Romanello case.

THE COURT: All right.

MR. TARRANT: So for the time being I believe that is all that I have, and I thank you very much for your help.

MR. MEEHAN: Your Honor, may I address the Court for a moment?

THE COURT: Yes.

MR. MEEHAN: Regarding the motion to dismiss, your Honor said that should be filed within five days of the Government attorney filing the information on discovery.

THE COURT: A week.

MR. MEEHAN: A week. I'm sorry. I take it it will be from the discovery itself and not a week from today, when he has filed these transcripts.

And another inquiry, your Honor, was, Would we have an opportunity to see the application to Judge Blumenfeld for the order for the wire tap?

THE COURT: Well, the application, I assume, is part of what you submitted today. These are documents being unsealed today and they will be part of the file today.

MR. MEEHAN: And they will be on record and available in the Clerk's office.

THE COURT: That is right.

As far as other disclosure, what else is there as far as the original tape?

MR. TARRANT: Insofar as the electronic surveillance, your Honor, there is the original tape; after monitoring, the log, the monitor--everything of the handling means, that also would have to be disclosed. They would have to be sealed with the tapes.

THE COURT: It seems to me there is no point in awaiting a motion to dismiss, for that purpose.

The motion normally goes to the appropriateness of procedures that were followed, whether there was compliance and all the rest.

So here, if the original tape itself gives you some new ground for attack, I won't foreclose you on that. But I think the Government is today making the disclosure which starts the time running.

MR. MEEHAN: We should have our motion in within one week?

THE COURT: Within one week.

MR. MEEHAN: Thank you.

MR. TARRANT: Thank you, sir.

(Hearing closed.)

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BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
VS.	)	Criminal No. H-298
	)	
WILLIAM R. BALOG ET AL	)	

UNITED STATES OF AMERICA	)	
	)	
VS.	)	Criminal No. H-299
	)	
ROGER L. SPINELLI ET AL	)	

COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that on September 25, 1972 I was an Official Court Reporter of the United States District Court for the District of Connecticut.

I hereby further certify that the within and foregoing is a true and correct transcript of notes taken by me to record proceedings held on September 25, 1972 in the above-entitled matter, in the United States District Court for the District of Connecticut, at New Haven, before Honorable Jon O. Newman, United States District Judge.

Austin M. Phelps
Official Court Reporter (Retired)

Date: December 3, 1976

FILED

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CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

- -x

UNITED STATE OF AMERICA

- versus -

WILLIAM R. BALOG, et al.,

Defendants.

- -x

Criminal Action

No. H-298

United States Court House
New Haven, Connecticut
October 24, 1972

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

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Appearances (Cont'd.)

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Bridgeport, Connecticut

THE COURT: H-298 Criminal, United States versus Balog. Now, are all those motions ready to proceed?

MR. MEEHAN: Yes, your Honor.

THE COURT: Are all the attorneys here on those motions? Is the Government represented?

MR. TARRANT: The Government is represented by counsel, your Honor.

THE COURT: I have criminal pleas and dispositions, so I will excuse the Balog case for a half hour. Counsel may remain in court if they wish, but if theywant to leave for a half hour, they all may.

MR. MEEHAN: Your Honor, may I address the Court?

THE COURT: Yes?

MR. MEEHAN: There's three motions here, motion to dismiss, motion for bill of particulars and motion for discovery. I would ask the Court if the motion to dismiss could go off without prejudice to be renewed; and the other two motions, Mr. Tarrant and I had agreed on quite a bit on those and we -- those that we could not agree on were heard before Judge Newman. They would be very brief.

THE COURT: Let's take them one at a time and see what we have here. Now, you are representing which defendant?

MR. MEEHAN: I represent William Balog, Nicholas Lanese, Richard Lanese and Nicholas Messina. And my name is Richard Meehan.

THE COURT: The first motion I have on my list is a motion for bill of particulars, and your claim is that most of that has been revealed by agreement?

MR. MEEHAN: Well, the motion for discovery, if we could take that first, your Honor, that's been -- quite a bit of that's been agreed to.

THE COURT: Now, why don't you tell me what has been agreed to?

MR. MEEHAN: Paragraph 1, 2 --

THE COURT: Excuse me. Now we are talking about the motion for discovery and inspection?

MR. MEEHAN: Yes, your Honor.

THE COURT: Go ahead.

MR. MEEHAN: Paragraph 1, 2, 3, 4, 6, 7, paragraphs 8, 9 and 10 we are not going to press, your Honor, those may be withdrawn. Paragraph 11, that's been agreed to; 12 has been agreed to. Fourteen, 16, 17, 21 and paragraph 22, your Honor, we are withdrawing.

THE COURT: What does that leave me to decide with respect to the motions for discovery and inspection? Could you give me the numbers of the paragraphs?

MR. MEEHAN: Paragraph 15, 18, 19 and 20, your Honor, I would argue those, your Honor, and cite -- in support of those paragraphs I'd like to give your Honor some citations.

THE COURT: Fine.

MR. MEEHAN: The first one would be -- as to paragraph 15 -- would be Gregory versum U. S., 369 Fed. 2nd 185,188. What we are asking for, Your Honor, are the names and addresses of all persons whom the Government intends to use as witnesses against the defendant so that those persons may be properly investigated prior to trial to determine their reputation in their respective communities, that's the truth and veracity, and I cite the Gregory case.

Paragraph 18 we're asking for the criminal record, if any, of all witnesses the Government intends to use against the defendant at the time of trial. Your Honor, this is now part of the rules of the Superior Court, State of Connecticut, and approved by the Supreme Court of Connecticut.

THE COURT: I do not mean to cut you off, Mr. Meehan, but if we are going to have argument you really should wait your turn because the other attorneys do have a priority here, on the list, anyway. If it were just a matter of stating a stipulation on the record I would be happy to hear that now, and then you could be released. Which would you prefer?

MR. MEEHAN: Well, your Honor, could I just give you the citations?

THE COURT: Yes. Fine.

MR. MEEHAN: On the motion for Bill of particulars, your Honor, we have six paragraphs, the Government is opposed to all six, and in support of our Paragraph 1 I just cite you

U. S. versus Tucker, 262 Fed. Supp. at 305; Paragraph 4, U.S. versus Withers, 303 Fed. Supp page 641. And that's it, your Honor.

THE COURT: All right. Now, how about the motion for inspection of grand jury minutes, is that still pending before me? Are there any agreements on that?

MR. MEEHAN: We are not pressing that motion.

MR. TARRANT: Your Honor, I don't think this defendant has filed a motion for --

MR. MEEHAN: We haven't made that motion.

THE COURT: All right.

MR. MEEHAN: Your Honor, may the motion to dismiss then go off without prejudice to renew it?

THE COURT: It may. It may go off. Does that take care of your defendants?

MR. MEEHAN: Yes, it does, your Honor. One.

THE COURT: There is one matter that I should bring up with all the attorneys in this case. I have noticed that some attorneys are representing one or more -- I should say more than one defendant. You gentlemen, I assume, are completely satisfied there is no conflict of interest here in representing more than one of these defendants?

MR. MEEHAN: If your Honor please?

THE COURT: Yes?

MR. MEEHAN: At the arraignment before Judge

Clarie all defendants were present and I pointed out to Judge Clarie that I was representing four defendants and I stated for the record that I had informed the four defendants that in the event that there -- the case went to trial or prior to trial, if at that time I felt that tere was a conflict, then I would so advise my clients and they would have to get other counsel, and Judge Clarie accepted that because of the fact that -- and I think he permitted me to stay in on these preliminary stages for all four with the understanding if there is a conflict our clients are aware that they would have to get other counsel, and this was stated for the record by other counsel involved with other defendants.

THE COURT: Unfortunately I did not know that Judge Clarie had discussed this with you. In fact, I didn't know that Judge Claire had had any part of this case. So, if he has considered already, and ruled upon it, of course I will go along with that ruling if I think it is the proper one.

How about the other motions, the other lawyers, are there any agreements we could put on the record, or are they going to be argued today?

MRS. AMENDOLA: If your Honor please, there is a defendant -- Charles Suglia -- in this matter, Mr. Zeldes has just filed an appearance on behalf of Mr. Suglia. The one who is printed on page 2 had had an appearance in there, and I will file my appearance. We do not anticipate filing any additional

motions for discovery in th matter since the other defendants have filed so many, but I would like to ask your Honor, and the Government has no objection, if we may have four weeks from the time of the discovery -- is all filed in which to file a motion to dismiss and suppress.

THE COURT: Very well. Has there been any agreement with respect to your client's motions with the Government?

MRS. AMENDOLA: I don't intend to file any discovery motions since there's been so many filed on behalf of the other defendants and the Government has been very liberal in furnishing discovery, so that as soon as the Government files all the discovery that they're going to, then we will -- if we could have four weeks in which to file a motion to dismiss and a motion to suppress?

THE COURT: That motion is granted. Are there any other agreements that I should know about?

MR. TARRANT: Your Honor, with regard to the motions which were just addressed to you, there was a great deal of overlapping in this case, that is, all -- practically all of the defense attorneys have filed identical discovery motions and motions for bill or particulars, it is the position of the prosecutor that whatever is allowed as to one defendant will be allowed to all defendants. So, with regard to Mr. Meehan's motion, which the Government has not objected to, with regard to him, it will not be objected to with regard

to any other defendant.

THE COURT: How about the other attorneys, do they wish to argue? Mr. Meehan said he would just disclose authorities and let the matter rest on the record. How about the other attorneys, are they going along with Mr. Meehan or would they like an argument today?

MR. HANKEN: If your Honor please. Well, there are certain matters that will be left to the discretion of the Court and I don't feel case law would be able to decide or give you authority or lend you some direction on which way you should go merely without argument, and I feel that -- especiallon on -- as to motion for bill of particulars and discovery as to the five or more persons involved in the naming of the five or more persons or naming the particular days on which $2 thousand in business was done, the Government has seen fit to merely give a spread of days and a spread of defendants witnout being particular; and I don't think case law would help you on that. I would like to leave it for argument.

THE COURT: You would like to what?

MR. HANKEN: I would like to have it argued before you, your Honor.

THE COURT: Today?

MR. HANKEN: Yes.

THE COURT: Fine. I am willing to hear anyone

that wishes to be heard. All right, Mr. Hanken, what would you like to say? I don't want to hear argument at this time, you will have a chance at 11:00 o'clock.

MR. HANKEN: I was going to make a suggestion, at least with regard to my clients, Gordon, Levin and Mastro, I was involved in an unrelated gambling case which came before this court -- the District Court -- several weeks ago when Judge Newman sat on an extended hearing on a motion for a bill of particulars, motion for disclosure and so forth, and the motions that were filed in that case are very similar, if not identical, to the motions that are filed in this case, and I have a file copy of Judge Newman's ruling and memorandum, especially with regard to defendant's motions for discovery and inspection, which is a lengthy memorandum.

THE COURT: Is that the Ramello case?

MR. HANKEN: Romanello.

THE COURT: Well, I have taken a look at that opinion by Judge Newman, and many aspects of that just puts: "Paragraph 6 denied, Paragraph 8 denied," and so forth. So I would have to get that entire file and start doing some cross comparisons here. May I suggest this? Are all the attorneys here on the Balog case? All the defense counsel? Let's see. Mr. Meehan is here, Mr. Hanken is here, Mrs. Amendola is here. Is Mr. Michael here?

MR. MICHAEL: Yes, your Honor.

THE COURT: All right. Can you gentlemen get together with the Government during this recess, and after the recess just take each defendant's motion and just read to me, or for the record, what has been agreed upon, what hasn't been agreed upon; and, if you wish, Mr. Hanken, you may point out what Judge Newman's rulings have been with similar requests? I think I had best hear you all, because this may get confusing, I might say, I would like very much to be consistent with Judge Newman's ruling in a similar case. So, if the Government and Mr. Hanken -- Mr. Meehan may be excused, it is up to him, if he wishes, but the other attorneys get together and -- perhaps in the jury room -- and I will see you at 11:15, and go over each and every motion and just read off the agreements, the disagreements and Judge Newman's rulings, which will be of great help to the Court.

Now, how about something like the motion to suppress and the return of evidence, when do you want to handle that? Whose motions are those?

MR. TARRANT: May I be heard on that, your Honor?

THE COURT: Yes.

MR. TARRANT: Your Honor, the motion to suppress and return of evidence has to do with a series of search warrants which were executed New Year's Day in the greater Bridgeport area. The basis for most of the information that was contained in the affidavit in support of the search warrants was

the product of electronic surveillance. The moving papers and those papers that go along with the order that was entered by the District Court have been unsealed and are on file in the Clerk of the Court's office in Bridgeport and, also, here for inspection and copying by the defense attorneys. However, there has been no unsealing of the tapes themselves. The defense attorneys have not had access to the tapes nor have they had access to the 10 registered tapes which were also used in conjunction with the wire tap and, therefore, as of this time I don't think any of those who are involved with a search that was conducted New Year's Day are prepared to go forward on their motion to suppress and return evidence.

THE COURT: Well, then, I will just leave those motions also for a statement by the Government and, or defense attorneys at 11:15.

Now, how about the Spinelli matter, is that a similar situation here, some things have been agreed upon, some haven't?

MR. FLYNN: I think, your Honor, some of them have been heard. My reason for being before your Honor is, apparently Judge Newman when he was the United States Attorney had some contact with a portion of the case involving perhaps one of the parties that I represent, and frankly and candidly, I don't remember whether or not your Honor did or not, but the time of that prosecution was approximately November of 1964,

and it is my recollection that your Honor went on the bench in August of that year.

THE COURT: August. Right.

MR. FLYNN: I think the same problem is going to exist. Perhaps chatting out in the jury room would expedite the matter.

THE COURT: All right. Could you do that, Mr. Flynn?

MR. FLYNN: Sure.

THE COURT: Maybe I will give you a little more time, then. Why don't I give you until 11:30 to iron out both these cases and make statements for the record.

Incidentally, I think I will order the Government to order transcripts of all prior proceedings in this case because I have now learned that Judge Clarie has had a part of it, Judge Newman has had a part of it, and since it is going to be assigned to me I better get the complete background.

COUNSEL: Excuse me, your Honor. On the Spinelli case, I was under the impression that Judge Newman had already heard and was going to decide on the motions for disclosure and discovery and the bill or particulars. Are we just doing this over again?

THE COURT: I am informed by the clerk that the case has been assigned to me because Judge Newman has informed the clerk that he is not going to rule on the motions and they

are to be reheard by me.

COUNSEL: I see. Thank you, your Honor.

THE COURT: Of course, your arguments before Judge Newman, if you wish, can be your arguments before me.

COUNSEL: I think getting together with the Government would be the proper thing. There's an awful lot agreed upon.

THE COURT: Very well. Why don't you just take your time, and I will see you at 11:30.

(Continued on page 14; no omission)

THE COURT: What will be the most orderly way to proceed so that the record will be most helpful to the Court in ruling? Shall we start with the Balog case? Have you decided upon one spokesman to state for the record what everyone has agreed to?

MR. TARRANT: May it please the Court, my name is John Tarrant and I am a Strike Force attorney out of Boston who is handling 298 and 299 which is before the Court.

Basically, our discussions this morning dealt with two of the motions that are on file, the first being discovery and inspection and the second being a bill of particulars. We kept in mind Judge Newman's ruling on discovery and inspection, and inspection in the Robally and the Government's position, if you please, with regard to the various motions I will state at this time.

If I might start with the motion of William R. Balog for discovery and inspection, Demand No. 1, with regard to statements, the Government will comply. With this proviso: it does not intend to produce internal documents, but as to statements of the defendant and a co-defendant, the logs, the transcripts and the tapes of the wire tap, we will provide those for inspection by the defense attorneys.

Demand No. 2, the Government will comply. This has to do with the conversations of intercepted communications.

Demand No. 3 --

MR. HANKEN: Excuse me, Mr. Tarrant. Can I understand just one thing? You are not limiting 1 and 2 just to the tape recordings, are you? I think there was two requests asked for any written confessions, admissions or statements aside from any tape recorded conversations. These would be like confessions given to the FBI officer wholly apart from any tapes?

MR. TARRANT: Well, Demand No. 1 asks for all written or recorded statements or confessions including logs, tapes, transcripts, records or FBI --

MR. HANKEN: I'm on a different one than you are.

MR. TARRANT: All right. Let me begin over. Mr. Moehan addressed the Court this morning, I started with Mr. Moehan's motions. I will go on to Mr. Hanken's motions. With regard to Demand No. 1, written confessions and so forth, the Government will comply.

Demand No. 2, the Government will comply.

Demand No. 3, the Government will comply.

Demand No. 4, the Government will comply.

Demand No. 5, the Government will comply.

Demand No. 6, the Government will comply.

Demand No. 7, the Government will comply.

Demand No. 8, the Government will comply.

Demand No. 9, the Government will comply.

Demand No. 10, the Government will comply.

Demand No. 11, the Government will comply.

12, the Government will comply.

Demand No. 13, the Government will comply.

Demand No. 14, the Government will comply.

Demand No. 15, the Government will comply.

Demand No. 16, the Government will comply

Demand 17, the Government will comply.

Demand No. 18, the Government will comply.

Demand No. 19, the Government will comply.

Demand No. 20, the Government will comply.

Demand No. 21, the Government objects to this. It calls for the name and addresses of all persons whose wire or oral communications were intercepted but who were not indicted.

THE COURT: Now, has Judge Newman ruled on a similar motion?

MR. HANKEN: Yes, your Honor.

THE COURT: In Romanello?

MR. HANKEN: I think --

THE COURT: Just a minute. I'm asking Mr. Tarrant. If you know.

MR. TARRANT: I believe he has in a different context than what is demanded here. It is my understanding -- and I may be corrected if I am wrong -- that Judge Newman has ordered the Government to disclose the dates and times of intercepted communications and the parties to those communications

if known, and in so doing, it would be made known to the defense attorneys who the conversants were in the intercepted conversations, and that I have agreed to do in my agreement with defense attorneys for discovery. But this demand is worded in a little different context, it calls for the names and addresses of persons whose wire oral communications were intercepted but not indicted, and I merely viewed that as a demand for my witnesses, which I oppose.

THE COURT: All right. Mr. Hanken, I think orderly procedure would require that when there is an objection by the Government, that immediately at that point I would hear oral arguments on it so I can keep the record straight.

MR. HANKEN: I think your Honor wanted me to point out on whether or not Judge Newman ruled on that?

THE COURT: Yes .

MR. HANKEN: He did. And he denied it. And, of course, it was our claim at the time that we needed this information to demonstrate that the investigation was conducted in such a way as to minimize communications not -- in any event, he ruled the content of such bears on necessities rather than the names of innocent persons intercepted.

THE COURT: Very well. Go on, Mr. Tarrant.

MR. HANKEN: That was denied.

MR. TARRANT: As to Demand 22, the Government will comply.

Demand 23, the Government will comply.

Demand 24, the Government will comply.

Demand 25, the Government will comply.

Demand 26, which requests the minutes of every grand jury session which investigated the case which resulted in a return of this indictment which investigated the defendants or any co-defendants whether they or in the District of Connecticut or in any other district, the Government would object to that demand on the grounds that the grand testimony is now considered governed by Rule 3500 of Title 18 and would be available as in the case of Jencks Act after witnesses testified for the purpose of cross-examination.

THE COURT: Mr. Hanken?

MR. HANKEN: I'm trying to find that in Judge Newman's ruling. The numbers were switched around, but to the bestof my recollection that was also denied.

THE COURT: Mr. Tarrant, continue, please.

MR. TARRANT: With regard to demand 27, this asks that the defendants be provided with a copy of the search warrants that were executed on New Year's Day in the greater Bridgeport area together with the affidavits which supported the issuance of the search warrants and the inventories which are attached thereto. We would oppose this demand for the simple reason that this material is presently on file in the clerk's office and is as accessible to the defense attorneys

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as it is to myself, and for that reason alone we would object to compliance here.

THE COURT: Mr. Hanken?

MR. HANKEN: That's quite all right, your Honor, as long as we know where the documents can be located.

THE COURT: All right, Mr. Tarrant.

MR. TARRANT: With regard to Demand 28 which calls for all Rule 16(b) material, the Governmentwill comply.

Demand 29, calling for Brady material, the Government will comply.

Demand 30, the daily logs of the monitoring agents who monitored the electronic surveillance, the Government will comply.

With regard to Demand 31, the Government will comply, but would object to doing so in quite the broad sense that the demand is stated, and qualifying its compliance to state that we would not like to disclose internal memoranda, but as for statements of the defendants or co-defendants, logs, transcripts, tapes of electronic surveillance, we will comply to that extent.

THE COURT: Mr. Hanken?

MR. HANKEN: That's all right, your Honor.

THE COURT: Very well.

MR. TARRANT: With regard to demand 32, this asks for a statement as to whether any non-pertinent telephone

calls were placed or received by the defendants, and, if so, whether or not they were recorded by the electonic intercept. I would decline to make such a representation, your Honor, because I don't think I am the proper party to make that judgment. The monitors' logs of the recorded conversations and the tape recorded conversations in full will be avilable to the defense attorneys, and I think as to non-pertinent calls, they are the best judge.

THE COURT: Mr. Hanken?

MR. HANKEN: Well, that's probably true, your Honor, except that, of course, on the transcripts, unless it is shown that a non-pertinent call was intercepted and then broken off in the middle, we would have no way of knowing whether or not any non-pertinent call was in fact made.

MR. TARRANT: Well, as far as --

MR. HANKEN: Or just deleted entirely.

MR. TARRANT: As far as Mr. Hanken goes, he is correct, the transcripts that we have provided to defense attorneys do not purport to be the verbatim transcription of everything that transpired, or the wire intercept, we do, however, feel that the monitor's notes are as complete as far as they go in being notes and that the actual intercepttions, the tape recorded conversations are complete and they are the primary documents from which this judgement can best be made.

THE COURT: And all those records you have referred to will be made avilable to the defendants, is that correct?

MR. TARRANT: Yes, your Honor. If I might digress at this moment. The monitor's notes, the transcripts, the moving papers for electronic surveillance have been unsealed by Judge Newman, are filed with the district court both here and in Bridgeport. The actual intercepted conversations are presently under seal in my custody at the FBI vault here in New Haven. Before the close of business today I would like to present to the Court a motion which would order their unsealing and thereafter we can have the actual tape recorded conversation availble for the defense attorneys also.

THE COURT: Very well. Proceed.

MR. TARRANT: And the final demand, No. 33, requests aliases known to the Government used by the defendants. The Government will comply.

Now, your Honor, I have addressed myself to what I think is a very comprehensive motion for discovery and inspection that, I believe, touches upon most of the demands in 296, United States versus William Balog, et al.

THE COURT: Have all the other defendants filed similar motions?

MR. MILLER: Well, your Honor, I have just a

few other paragraphs that Mr. Tarrant and myself have agreed upon as to their dispositions.

THE COURT: You represent whom?

MR. MILLER: I'm in the office of Sigmund Miller, representing Mr. Spinelli in 299.

THE COURT: We have not come to 299 yet, though.

MR. MILLER: The motions are almost identical in the two.

THE COURT: I will get to 299 in a minute. How about 298, anything else?

MR. MICHAEL: I represent Walter Hardy. My name is Robert Michael. And my motion for discovery and inspection is somewhat shorter. The Government in a previous answer had -- well, stated that they would comply with most of it, and I have no objection to their objections on the remainder of it if we could stipulate as to the Government's previous answer, I will -- that would be acceptable.

THE COURT: I want to be sure that the numbers are right, so for the record could you just state numbers one, two, et cetera are granted absent objection, numbers x and so forth are objected to, if there are any, just so I will have the right numbers when I look at these different motions.

MR. MICHAEL: The motion for discovery, number 1, was granted or would be complied with by the Government.

Number 2 is complied with.

Number 3, calling for recorded testimony of the defendant or any co-defendant before a grand jury, the Government answered there was no defendant testifying before the grand jury.

Number 4 will be complied with.

Number 5 will be complied with.

In Number 6, there was no search warrant for the defendant Walter Hardy.

And Number 7, again there was no inventory of anything searched or seized from Walter Hardy.

THE COURT: Very well. Any other defendants involved in 298 that wish to make any comment for the record?

Now, have we covered all the motions in 298?

MR. TARRANT: We have covered the discovery -- motion for discovery and inspection. However, we do have a motion for a bill of particulars.

THE COURT: Yes.

MR. TARRANT: Here again -- I will first address myself to the motion filed by Mr. Hanken in behalf of his clients.

With regard to Demand No. 1, identify all of the places within the District of Connecticut at which the Government claims the alleged illegal gambling business was owned, conducted, managed, financed, superivised and directed, the Government agrees to provide the address for the illegal

gambling businesses as it is charged in the indictment. And if I could qualify this; there's no objection to providing the addresses for the place of businesses, but there were transactions that took place outiside of these locations -- may have been on a street corner, may have been in an automobile, may have been at an ice cream parlor -- the Government does not want to particularize itself out of such evidence. And so it is with that qualification that we agreed to provide the addresses for the illegal gambling business.

THE COURT: Mr. Hanken?

MR. HANKEN: I am satisfied with that limited compliance.

THE COURT: Very well. Mr. Tarrant.

MR. TARRANT: With regard to Demand No. 2, the identity of the place at which the Government claims -- and here it is the named defendant Daniel Levin, but we can substitute each defendant -- owned, conducted, managed, financed and supervised and directed the illegal gambling business. Here again the Government does not object to particularizing where it is claimed each defendant had his place of business with the same qualfications as No. 1, that we do not particularize outselves out of those isolated instances where some transaction may have taken place outside of that place of business.

THE COURT: All right.

MR. TARRANT: With regard to Demand No. 3, state whether the Government contends that the defendant -- and here Daniel Levin is named, but we can apply this to each named defendant -- owned, conducted, managed, financed, supervised and directed all or a part of the alleged gambling ring business. The Government objects to this particularization at this time. The indictment charges a violation in the words of the statute and to particularize, as is demanded by this bill, we feel would unduly curb the presentation of evidence at this time.

THE COURT: Mr. Hanken.

MR. HANKEN: Well, your Honor, as I pointed out to Mr. Tarrant, he's had this case some time and he's got the wire tapping evidence and the logs and the testimony of agents and so forth, I don't see how it would be an undue burden to particularize it if he knows. I'm sure he's investigated the case thoroughly enough that he could give us an idea, because we're faced with any number of different capacities in which a man might be involved in a gambling business. In view of the fact that most all the transactions are on tape I don't think it would be prejudicial to the Government to have them tell us in what capacity exactly each defendant operated.

THE COURT: Does the best of your investigation reveal that Judge Newman had a similar type request in the Romanello case?

MR. HANKEN: I can't say, your Honor, because I don't have the rulings on the motion for the bill of particulars.

THE COURT: All right, I will reserve decision. Go ahead.

MR. TARRANT: In Demand No. 4 the defendants ask the Government "State the means by which the gambling business was conducted and if the Government contends the alleged gambling business was conducted by telephone, identify each and every telephone which the Government contends was used to conduct the illegal gambling business."

As to the first part, "State the means by which the business was conducted," the Government will comply with that. As to the second part, "if it is contended that telephones were used" -- and it is -- "identify each and every telephone which" we contend were used, and the Government will comply with that.

In Demand No. 5 they ask that we identify the person or persons receiving the gross revenue of $2,000 or more. The Government would object to particularization of that sort. The figure of $2,000 is a jurisdictional amount which confers Federal authority over this -- these matters as opposed to State authority, and, as the statute is written, the jurisdictional amount applies to the gambling business, not to anyone or combination of people participating in the

gambling business, and so for that reason we would object to particularizing which individual did a gross revenue of $2,000 in any single day.

THE COURT: Mr. Hanken.

MR. HANKEN: Well, your Honor, Mr. Tarrant tries to make a distinction, I think, between the business received $2,000 or indviduals receiving $2,000 a day and not the business. I mean, you don't criminally punish a business, it's not a corporation, these are people conducting the business, people get the money. I think we ought to know which persons do get the money. We can't say it goes to some entity called a business. The money ends up in somebody's pocket.

THE COURT: I will reserve. Mr. Tarrant.

MR. TARRANT: With regard to Demand No. 6, "Identify the particular days on which the Government contends $2,000 or more was received by any of the co-defendants, and if so, which one, and by the defendant" -- and in this case, Daniel Levin, but we can substitute here the name of any defendant. Bearing in mind that we do have electronic surviellance here and that the electonic surviellance has been subjected to scientific analysis, computations were made of the tapes as to the dollar amount that was involved in each day's activities. With that in mind, the Government will comply with that demand.

Demand No. 7, "State which of the named defendants

managed, supervised, financed and directed the alleged illegal bambling business." The Government would again oppose particularization at this time with regard to this demand on the basis that the indictment is couched in the words of the statute, that to particularize at this time in this way would unduly hamper or limit the proof available at the presentation of trial.

THE COURT: Mr. Hanken.

MR. HANKEN: Well, we'd make the same arguments for Paragraph 7 as I made for Paragraph 3.

THE COURT: Very well. Mr. Tarrant.

MR. TARRANT: With regard to Demand No. 8, "State whether or not telephone conversations are alleged to have been involved in the illegal gambling business, and if so, for each telephone conversation state the following." First of all, telephone conversations were involved, the date and time of each telephone conversation, the Government will provide that information; the names and addresses of both parties making the call and the party or parties receiving the call, to the extent that the Government can identify the parties to the intercepted conversations, that information will be provided; and third, the exact language used by each party to the call, this information, the exact language used by each party, will be provided, but we would rather do it in terms of making available the tape recorded

conversations rather than reciting the conversation in response to a bill of particulars.

THE COURT: Very well, proceed.

MR. TARRANT: Attorney Michael on behalf of Walter Hardy has filed a motion for a bill of particulars. In Demand No. 1 he asks the precise manner in which the defendant Walter Hardy committed the crime charged and the exact date or dates of such alleged criminal acts. The Government would oppose a particularization of this sort for the reason that this is what we must establish at trial. This is the Government's proof that is not properly material for a bill of particulars.

THE COURT: Mr. Michael.

MR. MICHAEL: If your Honor please, the purpose of the bill of particulars is to give this exact information to a defendant to let him know what exactly he is being charged with and when he was charged with these particular acts. The cirme charged contains some vicious verbs by which a person can be guilty of conducting this illegal business activity or being involved in this business activity, and I want the Government to tell me exactly what Mr. Hardy is being charged with.

THE COURT: I will reserve. Mr. Tarrant.

MR. TARRANT: Demands 2 through 7, the bill of particulars for the defendant Hardy request the precise manner

in which he conducted, financed, managed, supervised, directed and owned part of the illegal gambling business. The argument would be the same, the Government opposes particularization of this sort and that it would unduly confine the Government's proof and it is the matter to be decided or to be shown and established at the trial on the merits.

THE COURT: Any additional comments, Mr. Michael?

MR. MICHAEL: No, your Honor.

THE COURT: Very well. Mr. Tarrant.

MR. TARRANT: And Demand No. 8, the bill of particulars asks the exact language verbatim of the Connecticut law which the defendant Walter Hardy is alleged to have violated. The Government will comply with this request in an effort to not only set forth what it claims the defendant -- or all defendants -- violated in terms of the Connecticut General Statutes, but also to eliminate -- and I offer it principally for this reason -- to eliminate those potential offenses which we do not claim that these defendants participated in.

THE COURT: Very well.

MR. TARRANT: With regard to Demand No. 9, the exact dates and gross revenue of $2,000 in any single day was made and by whom such revenue was made. Well, again with regard to the scientific analysis that was made on the tapes of the recorded conversations we will provide the dollar amount

for the days that the interception was conducted and we will relate that dollar amount to the individuals who are handling the particular phone that was being intercepted.

Demand No. 10, name the five persons who conducted, financed, managed, supervised, directed and owned a part of the alleged illegal gambling business. The Government would oppose particularization of this sort in that the indictment charges the criminal offense, participation in an illegal gambling business, it names the ten defendants and we maintain that the indictment speaks for itself.

THE COURT: Mr. Michael.

MR. MICHAEL: If your Honor please, if the Government's answer is that the more than five persons are the ten persons named in the indictment, I'll be satisfied, but if they're not going to name them, then I think that they should be made because this is an essential element of the crime and, again, the defendant should be appraised of it.

THE COURT: I will reserve.

MR. TARRANT: I believe that covers all of the demands in the bill or particulars in H-298.

THE COURT: Any other motions in H-298 that we should have on the record?

All right, now we can proceed to 299.

The Court is appreciative of the way the presentation was handled in 298, and, hopefully, that 299 will

so as clearly set forth.

MR. FLYNN: Your Honor, maybe I can go over them briefly and then Mr. Tarrant can follow from the Balog file so that there won't be any question about it because he didn't mark up both of them.

THE COURT: All right.

MR. FLYNN: The first question was the written confessions, admissions and statements.

THE COURT: If there is an agreement, why don't you say what motion you are discussing and then just name them by number without telling me what is in it.

MR. FLYNN. H-299 is discovery and inspection.

THE COURT: Very well.

MR. FLYNN: According to my notes, items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, there is no objection. My notes indicate that there was an objection to 17, but I think -- I didn't write down that they -- the Government indicated that they would be disclosing this in the information. In any event, as part of this, it's a list of telephone numbers in effect from which oral or wire communications were intercepted and that, in addition to that, if there was an overhearing, a so-called third ear, to a conversation, that the Government would in fact disclose that fact to us.

MR. TARRANT: Agreed.

MR. FLYNN: 19 and 20, there is no objection; 21, there is no objection. Am I correct? The names and addresses of -- I'm sorry, there is objection to 21 -- 5, 21. Question No. 21 asks for the name and addresses of all persons whose wire or oral communications were intercepted but who were not indicted. The Government in response to this indicated that when they gave the logs and the transcripts of the intercepted communications that there would be no attempt to conceal the names of the persons who were making the calls insofar as that was known to the Government or could be known to the Government at any time up to the time of trial, and with that understanding there would be -- the objection can be noted and we're going to receive the information in an alternative fashion. Is that correct?

MR. TARRANT: Correct.

MR. FLYNN: Items Number 22,23,,24 and 25, there is no objection. Item 26 has to do with the production of grand jury testimony. The Government indicated that it would have it available for trial and that they would not make it available at this time. They would also determine whether or not there has been any grand jury testimony in other districts or in other cases which might have a bearing on this particular case. That objection -- that question, in the face of those circumstances, is withdrawn.

Item No. 27 -- I think our numbers now begin to

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change a little bit -- has to do with the production of documents taken from the possession of the defendants' books and memoranda. There were search warrants issued in conjunction with this investigation, and from some of the defendants they did deliver an inventory. This information I understand is all in the local office of the FBI and will be made available.

MR. TARRANT: Correct.

MR. FLYNN: No. 28 is -- no objection. It's Brady information.

Nos. 29 and 30, there is no objection, as is true of Nos. 31 and 32. This, Mr. Hanken's already discussed -- I'm sorry. 31, they indicate the logs will reflect that it was not a gambling item, that the logs will reflect that the interception was terminated and that will be an identification of the officer by initials and by his typed name at the base of the log.

MR. TARRANT: That is correct. It has to do with the non -- the interception of non-pertinent calls, and it's my position that I should not be the one to make that determination.

MR. FLYNN: Item No. 32, there is no objection, and Item 33 has to do with a copy of the inventory or the notice of the interception that was served upon each of the parties that were the subject of this. The Government will indicate the day that it received an order to serve that inventory and will provide a photocopy of the return

receipt of service of such notice.

THE COURT: How about the motion for the bill of particulars?

MR. FLYNN: Well, I think, your Honor, that with respect to -- again on H-299 and the bill or particulars for Robally -- the Government has agreed, in response to item 1, that they will describe the cities in the State of Connecticut or outside the state and the addresses within the cities where the violations are alleged to have occurred.

The Government did indicate that there were other transactions, as they mentioned in Mr. Hanken's bill of particulars on street corners and in candy stores and that sort of thing and they did not want to particularize themselves out of the capacity to offer that proof. And with that limitation, I understand that 1 can be granted.

The Government objects to item no. 2 which uses the four or five verbs, "knowingly, conducting, financing, supervising, directing and owning," I would ask the Court, in considering whether or not they will require the Government to be more particular with respect to this, to refer to the amendments to our so-callled pool selling and policy playing statute, particularly 295, which uses the same language.

The Government does indicate that they will try, insofar as possible, to eliminate items that they do not claim were involved in this alleged gambling enterprise,

ment is now alleging -- I contend -- alleging an illegal gambling business, to wit, bookmaking, and that with respect to this, the word "bookmaking" may mean different things to different people and they ought to spell out for me what this word, to wit, "bookmaking" means so that I can properly address myself to that claim.

Item 4 --

THE COURT: Well, what is the Government's comment on that?

MR. TARRANT: Well, if it is merely a definition of what bookmaking is or what we consider bookmaking to be within the context of this crime charged, there is no objection, but Mr. Flynn's argument is premised somewhat on the basis that under certain circumstances bettors -- bettors -- are considered to be participants in an illegal gambling business, whereas under the Federal statute bettors are not participants, they are excluded from the crime of -- which is charged under 19 -- Section 1955 of Title 18.

MR. FLYNN: But under Section 24 of 815 they are not excluded and the Government alleges a violation of 1955 and specifies Public Act 1963, Sections 23 and 24, they are 23 and 24, the so-called bettor pool selling violation. There is another provision in the statute that refers just to bettors, 53-271, as I recall, and the Government has included in their claims of violation of the Federal law

an aspect of the state law which the Government says does not apply to the Federal law, and for that reason I think the Government is going to have to particularize so that I can move to strike that.

MR. TARRANT: Well, that is the purpose for which I have agreed to attempt to particularize as to the Connecticut General Statute as to what we claim or we don't claim that the defendants charged did as part of the violation.

THE COURT: Very well. I will reserve. Continue.

MR. FLYNN: Paragraph 4 asks for those claims which the Government is going to make which are violations of 1955 and those claims which are supposed to be aiding and abetting, 1955, so that it may very well be that with respect to one or more of my clients, or, for that matter, one or more of the defendants, they will contend that the acquisition, for example, of line information is a part of an illegal gambling business and aids and abets, whereas as to other defendants they will allege in effect that the specific violation is taking wagers from specific individuals, perhaps, even -- I haven't heard -- perhaps, even including my clients, and I think that since they use the language at the end of the -- the last paragraph, it says, "in violation of 1955 and 2," that we ought to have that degree of particularity that will permit us to address ourselves either evidentially or as a question of law.

THE COURT: Mr. Tarrant.

MR. TARRANT: Well, your Honor, as far as what is alleged, what is alleged is contained in the indictment. As to what the participation was, this is a matter of proof.

THE COURT: I will reserve. Continue.

MR. FLYNN: The Government has agreed under Paragraph 5 to -- insofar as it is capable at this stage -- to attempt to particularize those items of Public Act 1865, 25 -- 53-295 and 296 to which they are addressing themselves and that argument was made with respect to Mr. Hanken and for purposes of today is acceptable.

We ask in 5 for them to tell me what my client did during the period in question that constitutes bookmaking.

THE COURT: Is there an objection to that?

MR. TARRANT: Insofar as the definition of bookmaking, no, your Honor.

MR. FLYNN: Paragraph 7 of my bill of particulars asks for five or more people, to state the names and addresses of these people. The Government in response to that says the five or more people are the ten persons named in this indictment -- I think there are ten -- and that they are the five or more people, and that we are not going to be faced with additional persons claimed to be of the five or more other than those ten.

MR. TARRANT: That's correct.

MR. FLYNN: And in the face of that claim, no further response would be necessary to that.

We ask, with respect to those ten people, to tell us what they did, again tying 1955 to 53-295, to spell out what it is that is claimed in violation of the gambling laws each of these individuals did, tying the verbs "conducted, financed, managed, supervised and directed or owned," into the State of Connecticut's gambling law 365 as alleged. I understand that the Government raises the same objection to that claim as it has raised earlier to Paragraph 2 of this bill of particulars.

THE COURT: I will reserve.

MR. FLYNN: The Government indicates to us that they will be limited with respect to Paragraph 8 to the reasonable times of the indictment, that is, within three days of the 17th day of December and three days after the first day of January and that their proof will be limited to that period of time.

MR. TARRANT: That's correct.

MR. FLYNN: So no response to 8 would otherwise be necessary -- I mean would otherwise be unnecessary. Excuse me.

THE COURT: With respect to the bill of particulars do any of the other attorneys have any comments?

MR. SHEIRO: If your Honor please, my name is

Daniel Shapro and I represent Ralph Robally. Edward G. Burstein's firm. I believe all of the items the Government has agreed to comply will satisfy our bill and motion for discovery.

THE COURT: How about the other attorneys? The same?

Now, with the motion for discovery does the same situation exist. I thought there were a few items you wanted.

MR. MILLER: I filed some amendments to the motion for discovery.

THE COURT: What defendant?

MR. MILLER: This is on behalf of Roger Spinelli in H-299. And Mr. Tarrant has our disposition of it and I will let him relate it to the Court.

MR. TARRANT: With regard to the defendant Roger Spinelli's amended motion for bill of particulars, item 14A, the names and addresses of persons applying for and the name and address of the person authorized in the application for the orders to intercept wire and oral communications, as far as the person applying for, that was myself; as far as the person authorizing me to make the application, it is the position of the prosecutor that the papers are on file with the district court, which is the complete package which permitted the interception of electronics surviellance in this case

and speaks for itself. The letter permitting me to make the application is there in the file.

THE COURT: Are you satisfied with that?

MR. MILLER: Yes, your Honor.

THE COURT: Very well, continue.

MR. TARRANT: Any and all affidavits -- this is 14B -- any and all affidavits submitted in support of the application. We agree to comply with this. This, too, is on file with the clerk.

14C, the names and addresses of the persons applying for the orders to intercept. That is myself, and we will comply with that.

14D, any and all affidavits which were submitted in support of the applications for the orders. We will comply with that. Those affidavits are on file with the clerk of the court.

With regard to 14E, any an all orders which were entered which either authorized or denied the applications for the interception of wire or oral communications. The Government will comply. There was an order entered based upon which electronic surveillance was conducted. There was no order which was denied. There was no application which was denied.

Demand 14F, please produce copies of all logs of the officer who monitored telephone calls placed or received

by the defendant. The logs of all officers who monitored all of the conversations of the defendants will be made available.

Please produce copies of all notes, logs, documents, memoranda and reports of all intercepted telephone calls of a personal and/or non-criminal nature placed or received by the defendants and indicate whether such calls were recorded. The Government will comply to this extent voluntarily: the logs, the transcripts and the tapes of the intercepted conversations will be made available. However, we would oppose disclosing interdepartmental or interbureau memoranda relative to this demand and, also, with regard to the material that is disclosed we would much rather have the defendant and his counsel make the determination as to what was pertinent and non-pertinent rather than the Government attorney.

MR. MILLER: If the Court please, would Mr. Tarrant state to the Court whether the logs contain all indications of non-relevant interceptions as far as the wiretapping operations? I know in places that the logs themselves will point to a non-business interception, if you want to call it business. I would just like that Mr. Tarrant state to the Court whether every such interception was cut off -- what is indicated on the logs.

THE COURT: Are the cut offs indicated?

MR. TARRANT: To my knowledge -- and I was not

the monitor nor was I present when the interception was taking place -- to my knowledge, that is correct.

THE COURT: Very well.

MR. TARRANT: But I am making that representation with the knowledge that I have.

THE COURT: Very well.

MR. TARRANT: With regard to Demand 21, state the names and addresses of all persons whose wire or oral communications were intercepted but who were not indicted and state the context of those communications so intercepted, the Government would comply with this demand in the sense that it qualified before: it intends to make available to the defense a list of the times of the calls intercepted, the numbers called if outgoing, and the parties to the intercepted calls, and we will in no way prevent or attempt to prevent the disclosure of individuals who are not indicted. But as to providing a list of persons who were intercepted and not indicted, we decline to do so in that it just calls for a list of potential Government witnesses.

THE COURT: I will reserve. Continue.

MR. TARRANT: As far as the context of the communications, those will be contained in the wire tap tapes.

Now, there is another supplemental motion for discovery by the defendant Spinelli. 14H, state the business address of Henry E. Peterson, indicated as Acting Assistant

Attorney General on the Government's Exhibit No. 1. That would be the letter which permitted me to make the application to Judge Blumenfeld for the intercept order. We will provide Henry Peterson's business address."State the complete employment record of Henry Peterson." We respectfully decline to do so for the basic reason we see it has no relevancy to this.

THE COURT: Will you identity him by the title that he now has?

MR. TARRANT: He is now --

THE COURT: I mean in your answer.

MR. TARRANT: Oh, yes. Yes. That is also called for and I will agree to that.

THE COURT: Very well.

MR. TARRANT: But I will not go look up his entire employment record.

14J, state the date on which the Henry Peterson was appointed Acting Assistant Attorney General, the period for which he will remain as Acting Assistant Attorney General and if he is no longer Acting Assistant Attorney General, the date upon which he was removed from said position. The Government will comply with that request.

State the position by Henry Peterson at the time of his appointment as Acting Assistant Attorney General. The Government will comply with that.

And 141, please produce a copy of the authorization appointing Henry E. Peterson Acting Assistant Attorney General and provide for inspection and copying rules, regulations and procedures for the appointment of Acting Assistant Attorney Generals and if said rules, regulations and procedures are presently available to the public, please provide the citations thereof. The Government will attempt to comply with that request.

Then, I believe, your Honor, that takes care of --

THE COURT: Mr. Flynn.

MR. FLYNN: Your Honor, in the course of our discussion with Mr. Tarrant we brought to his attention the fact that it is very difficult for all counsel to be going through each of these moving papers that have been filed, and I know from other experience that from time to time the questions are subsequently raised that items are missing from the court record by omission or they are misplaced or something of that nature. We have asked, therefore, that Mr. Tarrant make arrangements to deliver one complete copy of the transcriptions of the tapes, of all of the moving papers, of all of the affidavits to one of the defense counsel who will then assume the responsibility of being sure that copies of all of that -- all of those items are then made and distributed to all the other defense counsel.

THE COURT: How do you feel about that, Mr. Tarrant?

MR. TARRANT: Well, I understand what defense counsels' predicament is and I similarly appreciate their problem, and bearing in mind what the problems are, I will comply with their request.

THE COURT: This leads me to a thought I had in mind. Now, we have two cases with many attorneys, and maybe before the trial starts more attorneys will come in, some as trial attorneys, some as replacements, some as assistant trial attorneys, and so forth. It would be of great help to the Court, and even to the attorneys, if among themselves they kind of appointed a lead attorney to do something along the lines Mr. Flynn suggested with respect to the documents. In other words, one attorney get copies of certain things and be in charge of distributing them to the others.

Now, another thing I have in mind. In large conspiracy cases it is most distracting to the Court to pick up a motion that is numbered in the forties or fifties by paragraphs and another attorney obviously copying them verbatim, which is fine, except either for his own ego he likes to just switch them around and instead of following the numbers exactly he will change the numbers. I would appreciate if you gentlemen are filing similar motions that you not try to hide the fact. It is just good practice to keep alert to what the

other attorneys are doing and try to follow the same numbering and the same presentation as the so-called lead counsel. If in fact you are copying each other's motions. I had one last term. One attorney filed 55 requests. The other attorney had the identical 55 requests, but he re-numbered them so that instead of saying 1, 2, 3, 4, he went 1-A, 1-B, 1-C and then 2. So that his 2 was the first attorney's 5. It was very complicated for the Court. Yet they were verbatim. So keeping in mind what Mr. Flynn has suggested, if there is a lead counsel that just develops, I would appreciate that you not hide the fact and let him come forward and talk for all the defendants to the extent that he is so authorized.

Two other things. What happened to the other motions, like -- I guess the motion to suppress and return of evidence, the motion to dismiss and the motion for extensions of time to file additional motions, have they all been resolved?

MR. TARRANT: I understand that they are to go off without prejudice, your Honor.

THE COURT: All right. In both cases?

MR. TARRANT: Yes.

MR. FLYNN: And we have agreed with Mr. Tarrant, because of disclosure of personal problem that he faces, that there be a delay in his compliance with these discovery motions.

THE COURT: That was my ve[illegible] next question. Is

THE COURT: Is any one of the defendants incarcerated?

MR. HANGEN: No.

THE COURT: All right, gentlemen.

MR. TARRANT: Your Honor, before you adjourn, there is one more matter that I would like to bring up. I have a motion -- or I have an application for an order here, copies of which I have provided to each defense attorney, and what I am requesting in my application is that the Court order that at 10:00 a.m. on November 8th, 1972, 26 reels of recorded conversations presented to Judge Blumenfeld in December of 1971 and sealed by him and thereafter turned over to me, enlodged in the FBI safe be unsealed. That duplicate recording --

THE COURT: I suppose defendants would like that to happen, too.

MR. TARRANT: I think it's a must for them to pursue their motions to suppress.

THE COURT: I will grant your request.

MR. TARRANT: Now, this time and date is of my own choosing, I haven't consulted with any defense attorneys, but I have tried to put it in the future, November 8th, 10:00 a.m., so that if any of them wish to be there for it, they can be.

THE COURT: If that is a written order, I will sign it. If it is an oral order, I will grant it.

there some way that sooner or later somebody will write me a letter or a note signed by Government's attorney and lead counsel for each side as to some proposed schedule. That is, on or before date such and such the Government will comply; on or about such and such the defendants will have an opportunity to do something else, and so forth, right down to perhaps a tentative date for a pre-trial conference and a date of trial?

Now, I recognize that that could vary as the time goes on, but sooner or later why don't I just shoot from the hip, saying Mr. Hanken will be lead counsel in 298 and Mr. Flynn in 299, get together, work out some tentative proposal for scheduling, because I believe this case now will be assigned before me, and I would like to know if you want to go to trial in December or in March. Some tentative agreement subject to being changed as we go along.

MR. HANKEN: I don't think this case will be decided by March. Is this going to affect this one?

MR. FARRANT: The Rogers case? Well, a re-hearing en banc has been granted. I don't know if they have gone any further than that.

MR. FLYNN. Even so, with respect to this matter, from what Mr. Farrant has disclosed to us I don't think your Honor is going to be able to schedule other argument until about the first week in December.

MR. HANKEN: Your Honor, might I just point one thing out? You will note from some of our requests that we have asked for all the moving papers together with affidavits. Now, I just maybe ought to mention that from my experience in the previous case we were furnished almost immediately with affidavits from a Henry Peterson who, I understand, is involved in this case, Saul Lindenbaum, who is the Executive Assistant to the Attorney General, Will Wilson, former Attorney General John Mitchell --

THE COURT: What are you driving at?

MR. HANKEN: What I'm driving at is if these affidavits are in existence, Mr. Tarrant might not think they're relevant, but we may. In fact, I'm sure we will, inasmuch as the former case, at least, was based wholly on these affidavits, so that we'd also request that any affidavits in existence be likewise turned over to us from any member of the Justice Department or Attorney General or Assistant Attorney General.

MR. TARRANT: Your Honor, if I could put Mr. Hanken's question in proper context? In prior requests for electronic surveillance the letter received from the Department of Justice by the departmental attorney who made the application was signed with the name Will Wilson, Assistant Attorney General at the Department. So affidavits were called for from the Attorney General and his various assistants and the man who signed Will Wilson's name did it in order to show that

proper authorization had taken place.

THE COURT: I believe Judge Smith recently referred to them as the Will Wilson cases. This is not a Will Wilson case?

MR. TARRANT: This is not a Will Wilson case. The letter of authority to me contains the name of Henry Peterson. Now, who is the individual who is signing Will Wilson's name. Prior to ur ever meeting on this case I asked the Department of Justice to disclose, at least to me, who signed the name Henry Peterson and the chain of authority. The answer that I received was, "We won't until you are ordered to do so by the Court."

Now, my position is simply that the papers speak for themselves in this instance. To my knowledge, the persons whose names are on the documents are the persons who signed them. If the Court thinks otherwise or if the Court would like to take any other course of action, I would ask that you at least enter an order to whatever effect you wish so that I can proceed.

THE COURT: Well, it would occur to me offhand that the defendants should know if the Henry Peterson that is listed on the document signed himself or had someone else sign it. After all, we may now be getting into a line of cases called the Henry Peterson cases.

Incidentally, so my remarks will not be misconstrued, when I said Judge Smith referred to them as the

so-called Will Wilson cases, that was in a reported case that just came down a couple of days ago. You might have read it. I didn't want you to think he might have said that to me privately. But I believe in a recent 2nd Circuit decision he starts out by saying, "This is another Will Wilson case," or something like that.

Well, I think you are entitled to know if that is an authorized signature, and I will so order if there is any confusion about it.

MR. HANKEN: Well, in that vein, your Honor, naturally, the same way as Will Wilson had to be specially appointed or have his power specially designated by John Mitchell, I assume the same would occur in this case.

THE COURT: So it would seem from what I read.

MR. HANKEN: We ought to have the letter delegating the powers from John Mitchell to Mr. Peterson.

MR. FLYNN: Your Honor, that's always done by an initial on an internal Government memorandum and in the past there has been a requirement that those initials be authenticated because in some instances Mr. Lindenbaum claimed, at least with the authority of Mr. Mitchell, was writing "J.N.M." on the internal memorandum.

THE COURT: I will order the Government to comply with the request to the extent the other judges in this district and in other districts have so ordered. I think we

all know what we are trying to find out. If any problem arises you can file a supplemental motion, Mr. Hanken.

MR. HANKEN: Thank you.

THE COURT: But I do order Mr. Tarrant to comply to the extent hereinbefore ordered by other judges.

MR. TARRANT: Thank you.

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C E R T I F I C A T E

I hereby certify that the within and foregoing is a true and correct transcript of notes taken by me to record all proceedings at the hearing held on Oct 24, 1972, in the United States District Court for the District of Connecticut, at New Haven, Connecticut before the Honorable M C Blumenfeld United States District Judge.

Official Court Reporter

Dated: Nov 15, 1972

At: Bridgeport, Connecticut

-ooOoo-

FILED

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CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. H-298
	)	
WILLIAM R. BALOG, ET AL	)	

DISCOVERY AND INSPECTION

Now comes the United States of America, by and through its attorney, John R. Tarrant, Special Attorney, United States Department of Justice, and makes the following voluntary disclosure in response to the defendants' motion for discovery and inspection.

A. Motion of the Defendants William R. Balog, Nicholas V. Lanese, Richard M. Lanese and Nicholas R. Messina.

1. With regard to recorded statements made by the defendants charged in Criminal Indictment No. H-298, exclusive of intercepted communications, the following reports, copies of which are attached, are known to the attorney for the government: William R. Balog, dated January 20, 1972 and June 29, 1972; Richard M. Lanese, dated January 1, 1972 and January 19, 1972; Charles A. Suglia, dated January 20, 1972 and June 29, 1972; Louis Mastro, dated January 1, 1972; Nicholas R. Messina, dated January 21, 1972; and Walter T. Harty, dated January 19, 1972, June 29, 1972, June 30, 1972 and July 7, 1972.

2. With regard to logs, tapes and transcripts of intercepted conversations as to which the defendants are "aggrieved persons," as that term is defined in Section 2510(11) of Title 18, United States Code; the logs or monitor's notes, and the transcripts which the Federal Bureau of Investigation has prepared, are on file with the Clerk of the United States District Court at Bridgeport, Connecticut. The tapes of recorded conversations are available for listening at the office of the Federal Bureau of Investigation, 770 Chapel Street, New Haven, Connecticut. It is requested that contact be made with Special Agent Henry J. Flynn, Jr. (203-384-8251), Bridgeport, Connecticut, to arrange an appointment to listen to the tapes.

Pursuant to agreement by counsel, a copy of the logs or monitor's notes is being transmitted to Charles Hankin, Attorney for Louis Mastro, Max J. Gordon and Daniel Levin. It is expected that Mr. Hankin will make the logs available to other counsel in Criminal Indictment No. H-298.

3. With regard to logs, tapes and transcripts of intercepted conversations pertaining to the subject matter of Criminal Indictment No. H-298, they are available in their entirety as set forth in response No. A-2.

4. The order authorizing the interception of wire communications in which the defendants' names appear, which authorized the interception of communications to which the defendants were parties or which authorized interception to or from the defendants' premises, together with the application and affidavit in support thereof, are on file with the Clerk of the United States District Court at Bridgeport, Connecticut. A copy of the order, application and supporting affidavit are hereto attached.

5.-a. Times and dates of conversations intercepted:

December 17, 1971

2:04 P.M.	6:47 P.M.	7:18 P.M.
2:14 P.M.	6:51 P.M.	7:19 P.M.
2:30 P.M.	6:53 P.M.	7:25 P.M.
2:34 P.M.	6:56 P.M.	7:27 P.M.
6:29 P.M.	6:59 P.M.	7:32 P.M.
6:31 P.M.	7:00 P.M.	7:34 P.M.
6:33 P.M.	7:03 P.M.	7:36 P.M.
6:36 P.M.	7:05 P.M.	7:40 P.M.
6:37 P.M.	7:07 P.M.	7:42 P.M.
6:40 P.M.	7:10 P.M.	7:43 P.M.
6:43 P.M.	7:11 P.M.	7:45 P.M.
6:44 P.M.	7:13 P.M.	7:51 P.M.
6:46 P.M.	7:15 P.M.	7:52 P.M.

December 18, 1971

12:01 P.M.	12:27 P.M.	12:50 P.M.
12:03 P.M.	12:28 P.M.	12:51 P.M.
12:05 P.M.	12:30 P.M.	12:52 P.M.
12:06 P.M.	12:32 P.M.	12:53 P.M.
12:13 P.M.	12:33 P.M.	12:54 P.M.
12:14 P.M.	12:35 P.M.	12:56 P.M.
12:15 P.M.	12:36 P.M.	12:57 P.M.
12:16 P.M.	12:37 P.M.	12:59 P.M.
12:21 P.M.	12:38 P.M.	1:00 P.M.
12:23 P.M.	12:39 P.M.	1:01 P.M.
12:24 P.M.	12:40 P.M.	1:10 P.M.
12:25 P.M.	12:44 P.M.	1:13 P.M.
12:26 P.M.	12:49 P.M.	1:14 P.M.

December 18, 1971 - Continued

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3:56 P.M.
3:57 P.M.
3:58 P.M.
4:09 P.M.
4:10 P.M.
4:11 P.M.
4:19 P.M.

December 20, 1971

12:35 P.M.
12:57 P.M.
1:08 P.M.
1:15 P.M.
1:19 P.M.
1:21 P.M.
1:41 P.M.
1:50 P.M.
2:14 P.M.
2:25 P.M.
2:35 P.M.
3:00 P.M.
6:33 P.M.
6:35 P.M.
6:36 P.M.
6:37 P.M.
6:39 P.M.
6:40 P.M.
6:42 P.M.
6:44 P.M.
6:45 P.M.
6:46 P.M.
6:48 P.M.
6:50 P.M.
6:52 P.M.
6:55 P.M.
7:02 P.M.
7:05 P.M.
7:06 P.M.
7:09 P.M.

December 20, 1971 - Continued

7:11 P.M.	7:21 P.M.	7:29 P.M.
7:12 P.M.	7:22 P.M.	7:37 P.M.
7:15 P.M.	7:23 P.M.	7:41 P.M.
7:18 P.M.	7:28 P.M.	7:44 P.M.

5.-b. The information gained during the surveillance is available as set forth in response No. A-2.

5.-c. The surveillance intercepted approximately three hundred calls.

6. With regard to the pen register tapes utilized during the investigation of this case, they are available for inspection at the office of the Federal Bureau of Investigation, [redacted] Chapel Street, New Haven, Connecticut. It is requested that contact be made with Special Agent Henry J. Flynn, Jr. (203-384-8251), to arrange an appointment to inspect this material.

7. The report, pursuant to Section 2518(6) of Title 18, United States Code, to the judge issuing the interception order showing what progress was made is on file with the Clerk of the United States District Court at Bridgeport, Connecticut. A copy of that report is hereto attached.

8, 9, 10. The requests for the reports required to be filed pursuant to Sections 2519(1), (2) and (3) of Title 18, United States Code, have been withdrawn.

11. The interception of wire communications which formed a basis for Indictment No. H-298 terminated at approximately 8:00 P.M. on December 20, 1971. The notice of inventory, pursuant to Section 2518(8)(d) of Title 18, United States Code, was sent to the defendants William R. Balog, Nicholas V. Lanese, Daniel Levin, Max J. Gordon, Richard M. Lanese, Charles Suglia, Louis Mastro, Nicholas Messina and Walter T. Harty by certified mail on March 10, 1972.

12. The materials seized pursuant to federal search warrants executed on January 1, 1972 and the wire communications intercepted over telephone No. 372-5434 were submitted for examination by the Federal Bureau of Investigation laboratory. Copies of the laboratory reports dated March 15, 1972 and June 7, 1972 are hereto attached.

13. The individual responsible for the laboratory analysis of the physical evidence seized and the wire communications intercepted is Phillip Harker of the Federal Bureau of Investigation Laboratory, Washington, D. C. The reports of the laboratory analysis dated March 15, 1972 and June 7, 1972 are hereto attached.

14. The search and seizure warrants, hereinafter listed in response to demand A-20, together with the affidavit in support thereof, are on file with the Clerk of the United States District Court at Bridgeport, Connecticut.

15. The government opposes disclosure of the names and addresses of government witnesses.

16, 17, 18. Statements, grand jury testimony and criminal records, if any, of all government witnesses will be produced pursuant to 18 U.S.C. 3500.

19. Those local and state police officers who participated in the investigation of the case which formed the basis for Criminal Indictment No. H-298 include: Bernard DePrimo, Orlando Moranino, Robert T. Keller, Trooper Ohradan, Brian Maloney, Donald Simmons, David Page, Morton Denerstein and George Huston of the Connecticut State Police; Fred S. Cisko and Wilber Barrett of the Bridgeport Police Department; William G. McMullen of the Milford Police Department; and Mike Del Vecchio of the Trumbull Police Department.

20. At approximately 3:00 A. M. on January 1, 1972 the following locations were searched as part of the investigation which led to Indictment No. H-298 pursuant to federal search warrants issued by United States Magistrate Dion W. Moore.

a. Apartment 46, 3880 Main Street, Bridgeport, Connecticut;

b. 3765 Main Street, Bridgeport, Connecticut;

c. Apartment 3B, 505 Jewett Avenue, Bridgeport, Connecticut;

d. Apartment H-6, 2340 North Avenue, Bridgeport, Connecticut;

e. 177 Walnut Street, Milford, Connecticut;

f. 15 Cromwell Road, Trumbull, Connecticut;

g. 812 Thorne Street, Bridgeport, Connecticut;

h. 17 Overhill Road, Milford, Connecticut.

21. The government is not aware presently of any information, additional to what is being disclosed herein, falling within the rule of Brady v. Maryland. However, the duty to disclose such information is a continuing one and should such information become known to the government it will be produced immediately.

22. The demand for information concerning the selection, drawing, summoning and qualifications of the grand jury involved in this case has been withdrawn.

B. Motion of the Defendants Louis Mastro, Max J. Gordon and Daniel Levin.

1. No defendant in Criminal Indictment No. H-298 gave a written confession, admission or statement to the attorney for the United States, or any other law enforcement officer.

2. Statements made by the defendants to government or law enforcement agents are attached hereto and listed above in response to A-1 above.

3, 4. The government is not aware of any other statements, admissions or confessions of the defendants or co-defendants.

5. An application for an order authorizing and approving the interception of wire communications was submitted to the United States District Court for the District of Connecticut on December 16, 1971 in connection with the investigation of the unlawful activities of the defendants William R. Balog and Nicholas V. Lanese, charged here in Criminal Indictment No. H-298.

6.-a. An order was issued on December 16, 1971.

6.-b. A copy of the application is attached hereto in response to A-4 above.

6.-c. The investigative or law enforcement officer making the application was John R. Tarrant.

6.-d. The making of the application was authorized by John N. Mitchell and Henry E. Petersen. Attached are copies of affidavits of John N. Mitchell and Henry E. Petersen outlining the authorization process.

7. Wire communications were intercepted to and from telephone No. 372-5434 located at Apartment 46, 3880 Main Street, Bridgeport, Connecticut. Multiple appearances for telephone No. 372-5434 were located at binding post No. 11 within the telephone cable box in the basement of 3880 Main Street, Bridgeport, Connecticut. A leased line telephone circuit originating within the telephone cable box in the basement of 3880 Main Street, Bridgeport, Connecticut, and terminating within the office of the Federal Bureau of Investigation, Federal Building, 915 Lafayette Boulevard, Bridgeport, Connecticut, was located on binding post No. 50. A jumper wire was attached to binding post No. 11 and cross connected to binding post No. 50 within the telephone cable box located in the basement of 3880 Main Street, Bridgeport, Connecticut. Recording equipment was placed on the leased telephone line originating in the basement of 3880 Main Street, Bridgeport, Connecticut, and terminating within the office of the Federal Bureau of Investigation, Federal Building, 915 Lafayette Boulevard, Bridgeport, Connecticut.

8. The identified persons believed to have been committing the offenses which formed the basis for the application for interception were Roger L. Spinelli, John J. DeLucia, Nicholas V. Lanese, William R. Balog and Peter D. Chapdelaine.

9. At the time of the application the offenses the government believed the persons, whose communications were to be intercepted, were committing included Sections 1955 and 371 of Title 18, United States Code.

10. For a period of six months prior to the filing of an application for an order to intercept wire communications at Apartment 46, 3880 Main Street, Bridgeport, Connecticut, normal investigative procedures, consistent with the type of violations being committed and calculated not to disclose to the potential defendants the existence of the investigation, were employed but failed to develop evidence sufficient to support prosecution. The procedures utilized are reflected in the affidavit of Special Agent Danny F. Steinke, which is hereto attached.

The sources of confidential information, while agreeable to providing information on a discreet basis, refused to testify in any proceeding where their identity would become known.

Standard visual surveillance proved only partially successful. While it was possible to observe the suspects entering or leaving their suspected book location, it was not possible to observe them actually operating the illegal gambling business.

Examination of telephone toll records of the suspects did not indicate the nature and content of the calls and did not reflect local calls of a criminal nature.

Interviews with individuals known to have utilized the illegal services provided by the suspects, but who were not cooperative with investigative officers, were considered too risky to attempt. In all likelihood anyone interviewed would immediately alert the suspects that they were under investigation.

Experience with the use of immunity grants to compel testimony has taught that individuals involved in illegal organized gambling and knowledgeable enough to provide evidence sufficient for conviction will suffer incarceration for contempt rather than testify and fear for their safety. Furthermore, an attempt to secure testimony under a grant of immunity, if unsuccessful, would undoubtedly result in the disclosure of the pending investigation and thereby destroy it.

The use of search warrants, assuming the suspects did not destroy the evidence before the executing officers seized it, very likely would not result in the obtaining of physical evidence sufficient to reflect the complete nature and scope of the gambling operation.

The judgment made in this case, that normal investigative procedures reasonably appear unlikely to succeed, was not based upon what investigative techniques were theoretically possible, but, considering all the facts and circumstances, what techniques, viewed in a practical and commonsense fashion, would likely bring the investigation to fruition.

11. The interception of wire communications was sought to be maintained on a daily basis between the hours of 12:00 noon and 8:00 P. M. until the manner in which the suspects participated in

conducting their illegal gambling business, the identities of their confederates, their duties and responsibilities, their places of operation and the nature and scope of the illegal gambling business was revealed or for a fifteen day period.

12. The application for the interception of wire communications which formed a basis for Criminal Indictment No. H-298 was made on December 16, 1971. As of that date there had been no application made for authorization to intercept wire or oral communications of any of the defendants. More precisely, prior to December 16, 1971, no defendant in Criminal Indictment No. H-298 was named in an application or order to intercept wire or oral communications. However, the defendant Daniel Levin did participate in wire communications monitored by the Federal Bureau of Investigation between June 18, 1971 and June 25, 197[illegible].

13. There were no written or oral applications for extensions of judicial orders.

14. The order authorizing and approving the interception of wire communications of the defendants in Criminal Indictment No. H-298 is on file with the Clerk of the United States District Court at Bridgeport, Connecticut. A copy is hereto attached.

15. Wire communications of the defendants were intercepted for a period of four days.

16. The last date on which the order authorizing interception of wire communications was in effect was December 30, 1971.

17. The original tapes of recorded conversations, a copy of the original tapes, and the original transcript of the tape recorded conversations are in the custody of the Federal Bureau of Investigation at New Haven, Connecticut. A copy of the transcript of the recorded conversations is on file with the Clerk of the United States District Court at Bridgeport, Connecticut, and is in the possession of John R. Tarrant, Special Attorney, United States Department of Justice.

18. The telephone number from which or to which wire communications were intercepted include:

372-[illegible]434
372-9133
268-7731
366-[illegible]7
878-7705
878-6604
374-8139
878-7014
878-2312
372-5801
374-4451
374-4769
333-1224
374-9395
878-1721
377-1000
792-5498

19. The dates on which wire communications of the defendants charged in Criminal Indictment No. H-298 were intercepted were December 17, 1971, December 18, 1971, December 19, 1971 and December 20, 1971. On December 17, 1971 the interception devices were working from approximately 1:30 P. M. until approximately 8:00 P. M. On December 18, 1971 the interception devices were working from approximately 12:00 noon until approximately 8:00 P. M. On December 19, 1971 the interception devices were working from approximately 12:00 noon until approximately 4:45 P. M. And on December 20, 1971 the interception devices were working from approximately 12:00 noon until approximately 7:50 P. M.

20.-a. The nature and location from which the wire communications were intercepted are set forth above in response No. B-7. The recording equipment attached to the leased telephone line consisted of a tape recorder and a dial impulse recorder, also known as a pen register device. The equipment utilized included Magnacord Transport Serial No. T-382, Magnacord Amplifier Serial No. A-88, 6A Amflifier Serial No. 360, 6AR Pen Register Serial No. 1 and Pen Register Device Serial No. 10. The year of manufacture of the aforementioned items is not known.

The aforementioned items are available for inspection at the office of the Federal Bureau of Investigation, 770 Chapel Street, New Haven, Connecticut. It is requested that contact be made with Special Agent Henry J. Flynn, Jr. (203-384-8251), Bridgeport, Connecticut, to arrange an appointment.

20.-b. The individuals who participated in the installation and operation of the equipment utilized in the interception include:

21. The government opposes disclosure of the names and addresses of persons intercepted but not indicted.

22. No request was made for postponement of the service of the inventory pursuant to 18 U.S.C. 2518(d).

23. The transcript of the tape recorded conversations intercepted pursuant to the order of December 16, 1971 are on file with the Clerk of the United States District Court at Bridgeport, Connecticut. The summary of conversations or monitor's notes are being provided as set forth above in response No. A-2. No conversations of the defendants were intercepted without a judicial order.

24. There was no non-electronic surveillance of the defendants within the meaning of Katz v. United States, 389 U.S. 347 (1967).

25. The government presently anticipates identifying the participants in the intercepted wire communications by voice recognition. There has been no identification of voices of the defendants by electronic means.

26. The government opposes production of the grand jury minutes prior to trial. They will be available in accordance with Section 3500 of Title 18, United States Code.

27. The search warrants and supporting affidavit utilized as part of the investigation are listed in A-20 above and are on file with the Clerk of the United States District Court in Bridgeport, Connecticut.

28. All material falling within the scope of Rule 16(b) is available for inspection at the office of the Federal Bureau of Investigation, 770 Chapel Street, New Haven, Connecticut. It is requested that contact be made with Special Agent Henry J. Flynn, Jr. (203-384-8251), Bridgeport, Connecticut, to arrange for an appointment to inspect the documents.

29. Consult A-21 above regarding Brady material.

30. Copies of the daily logs for telephone No. 372-5434 are being provided to Attorney Charles Hankin with the understanding that they will be available to all counsel.

31. Logs, tapes and transcripts of intercepted calls, as herein indicated, will be available to each defendant and his counsel. The determination as to whether any intercepted calls were personal and/or non-criminal is up to the respective defendant to decide.

32. The government declines to make the determination for the defendants whether any non-pertinent telephone calls were placed or received. They are best equipped to make that determination.

33. Alias names used by the defendants include:

Herman	:	Daniel Levin
David Sullivan	:	Daniel Levin
Louie the Lip	:	Louis Mastro
A. George Carpenter	:	Daniel Levin
George A. Carpenter	:	Daniel Levin
Dave	:	Richard M. Lanese

C. Motion of the Defendant Charles S. Suglia.

1. The government opposes disclosure of the names and addresses of witnesses for the prosecution.

2. The government opposes disclosure of the names and addresses of persons who provided information during the investigation which led to Criminal Indictment No. H-298. However, if any of the information provided is determined to fall within the rule of Brady v. Maryland, it will be provided to the defendant immediately.

3. Statements of the defendant Suglia are provided in response A-1 above.

4. The grand jury minutes of government witnesses will be provided pursuant to 18 U.S.C. 3500.

5. All material falling within the scope of Rule 16(b) is available as set forth in response B-28 above.

6. The criminal record, if any, of any government witness will be provided pursuant to 18 U.S.C. 3500.

7. The government opposes the disclosure of information relating to investigations of persons from whom the government obtained information in this case. However, if such information is deemed to fall within the scope of Brady v. Maryland, it will be provided immediately.

8. Electronic surveillance information will be made available as set forth in responses A-2, A-4, A-5, A-6, A-7, B-6, B-14, B-17, B-18, B-19, B-20 and B-23 above.

9. Consult response No. A-21 regarding Brady material.

10. Search warrants executed as part of the investigation of this case are listed in response to A-20 above. Each warrant and the supporting affidavit is on file with the Clerk of the United States District Court at Bridgeport, Connecticut.

D. Motion of the Defendant Walter T. Harty.

1. Statements of the defendant Harty are provided in response No. A-1 above.

2. Results of scientific experiments are provided in response No. A-12 above.

3. None of the defendants in Criminal Indictment H-298 testified before the grand jury.

4. All material falling within the scope of Rule 16(b) is available as set forth in response No. B-28 above.

5. The defendant Harty was arrested pursuant to a bench warrant issued upon Criminal Indictment H-298. The arrest warrant is on file with the Clerk of the United States District Court.

6. No search warrant was issued concerning Walter T. Harty.

7. No items of physical evidence were seized from Walter T. Harty.

Respectfully submitted,

John R. Tarrant

JOHN R. TARRANT
Special Attorney
U. S. Department of Justice

ATTACHMENTS

1. Statements

William R. Balog - 1/20/72; 6/29/72
Richard M. Lanese - 1/1/72; 1/19/72
Charles A. Suglia - 1/20/72; 6/29/72
Louis Mastro - 1/1/72
Nicholas Messina - 1/21/72
Walter T. Harty - 1/19/72; 6/29/72; 6/30/72; 7/7/72

2. Logs - U.S.D.C. - Ct. #20: 372-5434* dated

12/17/71
12/18/71
12/19/71
12/20/71

*Note only one copy provided directly to defense, that to Charles Hankin. Copy also on file with Clerk, United States District Court.

3. Order Authorizing Interception of Wire Communications

4. Application for Interception Order

5. Letter permitting filing of the Application

6. Affidavit of John N. Mitchell

7. Memorandum of John N. Mitchell

8. Affidavit of Henry E. Petersen

9. Affidavit in support of Application for Interception Order

10. Report to the Court

11. Laboratory Report dated June 7, 1972*

*Note: U.S.D.C. - Ct. #20 refers to telephone No. 372-5434.

12. Laboratory Report dated March 15, 1972*

*Note:

Team	Address Searched
1	17 Overhill Road, Milford
5	15 Cromwell Road, Trumbull
6	3880 Main Street, Bridgeport
7	812 Thorme Street, Bridgeport
9	3765 Main Street, Bridgeport
13	177 Walnut Street, Milford
14	2340 North Avenue, Bridgeport
19	505 Jewett Avenue, Bridgeport

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. H-298
	)	
WILLIAM R. BALOG, ET AL	)	

CERTIFICATE OF SERVICE

Boston, Massachusetts
February 12, 1973

I, John R. Tarrant, Special Attorney, United States Department of Justice, hereby certify that discovery material in the above-captioned case was on this date mailed, postage prepaid, to Richard T. Meehan, Esquire, 171 Golden Hill Street, Bridgeport, Connecticut 06604, attorney of record for the defendants William R. Balog, Nicholas V. Lanese, Richard M. Lanese and Nicholas Messina: Charles Hankin, Esquire, 1330 Fairfield Avenue, Bridgeport, Connecticut 06605, attorney of record for the defendants Daniel Levin, Max J. Gordon and Louis Mastro: Jacob D. Zeldes, Esquire, Lafayette Tower Plaza, 333 State Street, Bridgeport, Connecticut 06603, attorney of record for the defendant Charles S. Suglia and Robert J. Michael, Esquire, Post Office Box 88, Danbury, Connecticut 06810, attorney of record for Walter T. Hardy.

John R. Tarrant

JOHN R. TARRANT
Special Attorney
U. S. Department of Justice

FD-302 (REV. 3-17-69)

FEDERAL BUREAU OF INVESTIGATION

Date January 21, 1972

On January 20, 1972, WILLIAM ROBERT BALOG, 42 Whittier Street, Bridgeport, Connecticut, was interviewed at his residence concerning his involvement with an illegal gambling operation in the Bridgeport, Connecticut, area.

At the outset of the interview, BALOG was advised by Special Agent ALAN G. RINGGOLD of the identity of the interviewing agents, and of the purpose for the interview. He was advised that he had the right to remain silent and to refrain from answering questions, and that any statement made by him could be used as evidence against him. He was further advised that he had the right to consult with an attorney. BALOG indicated verbally that he understood his rights, but declined to execute an FD 395, Interrogation; Advice of Rights form.

BALOG declined all comments regarding his activities as concerning gambling. He advised that he did not work for NICK LANESE, but declined comment when asked for whom he worked. He mentioned that he was a close friend of the entire LANESE family, including NICK, RICHARD, and their father, MICHAEL LANESE. NICK was the owner of the New Frontier Restaurant, an establishment frequented by BALOG. RICHARD LANESE was known to him the most closely. BALOG acted as best man at LANESE's wedding, and they had known each other for the majority of their lives. MICHAEL LANESE was known to BALOG as he had visited the LANESE home often. The LANESE home was located on Taft Avenue, but BALOG did not know the exact address.

BALOG admitted knowledge of LOUIS MASTRO, saying that they had met in the New Frontier. Although MASTRO was not a regular customer, he occasionally came into the restaurant to get a couple of drinks. He denied any gambling connection with MASTRO.

DANNY RICCO was familiar to BALOG as he had been introduced to RICCO by RICHARD LANESE. RICCO and LANESE played in the same softball league, but BALOG denied passing any sort of gambling information to RICCO.

On 1/20/72 at Bridgeport, Connecticut File # NH 182-46

by SA DANNY F. STEINKE
SA ALAN G. RINGGOLD Date dictated 1/21/72

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TONY CAPASSO was also a friend of BALOG's, who was an employee of the Connecticut Distributors. BALOG denied any gambling activity between the two, saying that theirs was a social acquaintance.

BALOG denied any knowledge of PAULIE MORETTI, MICHAEL MAHIGEL, or SAL BASSO.

The following description of BALOG was obtained through observation and interview:

Date of birth:	November 15, 1938
Placeof birth:	Blakeley, Pennsylvania
Height:	5 feet 7 inches
Weight:	160 pounds
Hair:	Brown
Eyes:	Blue
Scars and marks:	Scar under left eye, and end joint of right index finger missing
Employment:	None

FEDERAL BUREAU OF INVESTIGATION

Date June 29, 1972

1

WILLIAM ROBERT BALOG was placed under arrest at 7:02 am, June 29, 1972, at his residence, 42 Whittier Street, Bridgeport, Connecticut, by SA HERBERT NORTHCUTT, JR., RAYMOND A. CONNOLLY, and Detective FRED CISKO, Bridgeport, Connecticut, Police Department.

BALOG was advised of his rights at this time and the nature of the charges against him. He advised that he understood his rights but declined to sign a Waiver of Rights form. BALOG also stated that he did not desire to make any statement at this time.

BALOG furnished the following descriptive data:

Name:	WILLIAM ROBERT BALOG
Residence:	42 Whittier Street, Bridgeport, Conn.
Sex:	Male
Race:	White
Height:	5'7"
Weight:	155 lbs.
Eyes:	Blue
Hair:	Brown
Born:	11/15/38, Blakeley, Pa.
Soc. Sec. No.:	045-30-5967

At 7:15 am on June 29, 1972, BALOG received a call at his residence while dressing. He was heard to say, "Hello Helen," and after a brief pause said, "I know. They are here."

On 6/29/72 at Bridgeport, Conn. File # NH 133-46

by SA RAYMOND A. CONNOLLY/RAC:md 2 Date dictated 6/29/72

SA HERBERT NORTHCUTT, JR.

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FD-302 (REV. 3-17-69)

FEDERAL BUREAU OF INVESTIGATION

Date 1/10/72

On January 1, 1972, Special Agents JOHN A. DANAHER, JAMES R. WRIGHT, and JAMES J. MC CARTHY, Connecticut State Trooper DONALD SIMMONS and Detective WILLIAM G. MC MULLEN, Milford Police Department, served an authorized search warrant at 177 Walnut Street, Milford, Connecticut.

At 3:01 PM Special Agent JOHN A. DANAHER knocked at the front door of a one story single frame home at 177 Walnut Street, Milford, Connecticut. He then announced that he was from the Federal Bureau of Investigation (FBI) and had a search warrant. The door was opened by a man, who [illegible]ured the search party into the home. He identified himself as RICHARD LANESE and stated that he was the owner of 177 Walnut Street, Milford, Connecticut.

Special Agent DANAHER exhibited his credentials and advised LANESE that he was not under arrest, but that a search warrant had been issued and the house was to be searched at this time.

Trooper SIMMONS was assigned to handle phone calls. Detective MC MULLEN was assigned to take photographs of the rooms in the house before and after the search. Special Agents MC CARTHY and WRIGHT were assigned to search as was Detective MC MULLEN after he had taken photographs of each room.

RICHARD LANESE stayed in the living room of the home until 3:05 PM when he said he did not wish the whole house searched, as he had two children sleeping in a bedroom, and that he preferred to show those searching the material he had on betting stored in the closet of the master bedroom. LANESE turned over to those searching a paper bag from the closet of the master bedroom containing numerous material concerning betting.

At 3:11 PM after a phone call had come to the house and was answered by Trooper SIMMONS, who said to the caller that he was not DAVE but RICH, the caller hung up. At this time LANESE stated that he often used the name DAVE when answering the phone.

On 1/[illegible]/72 at Milford, Connecticut File # [illegible] 133-46

by SAs JAMES R. WRIGHT, JAMES J. MC CARTHY and JOHN A DANAHER JAD:mfl Date dictated 1/[illegible]/72

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At this time Special Agent DANAHER read to RICHARD LANESE his rights and asked if he would sign a Waiver of Rights form. LANESE advised he understood his rights, but refused to sign a form.

The following is a result of the search conducted by Special Agent JAMES R. WRIGHT.

At 3:01 PM he searched the front living room closet. At 3:05 he was shown by RICHARD LANESE a paper bag on the shelf in the closet of the master bedroom which LANESE stated contained betting slips and miscellaneous paraphernalia. WRIGHT searched the paper bag and verified that it contained betting material. At 3:35 PM he located an index box containing names and addresses which box was located in the bureau of the master bedroom. At 3:35 PM he searched the basement area of the home. At 3:44 PM he gathered together and marked all of the items which he had seized during the search.

Special Agent JAMES J. MC CARTHY conducted a search of the master bedroom. Special Agent MC CARTHY found on the bureau in the master bedroom a pewter mug containing betting lists and papers and in the lower left hand drawer of the bureau he also found betting papers, as a result of RICHARD LANESE having pointed out their location. Agent MC CARTHY also searched in the cellar and found nothing. LANESE accompanied Agent MC CARTHY on the search.

Detective WILLIAM J. MC MULLEN of the Milford Police Department assisted Special Agent WRIGHT in searching the paper bag taken from the closet in the master bedroom in which they found numerous bits of material concerning betting.

Special Agent DANAHER removed a wall phone, green in color, with the number 878-7705 from the wall of the kitchen. He also removed from a night table in the master bedroom a table phone, color black, with the number 878-6604.

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FD-302 (REV. 3-17-69)

FEDERAL BUREAU OF INVESTIGATION

1 Date January 21, 1972

On January 19, 1972, RICHARD LANESE, 177 Walnut Street, Milford, Connecticut, was interviewed at his residence by Special Agents ALAN G. RINGGOLD and DANNY F. STEINKE, concerning his involvement with an illegal gambling operation.

At the outset of the interview, LANESE was apprised by Special Agent ALAN G. RINGGOLD of the identity of the interviewing agents, and of the purpose for the interview. He was told that he had the right to remain silent and to refrain from answering any and all questions posed, and that any statement made by him could be used as evidence against him. He was also informed of his right to consult with counsel, which right he waived. He declined to execute an FD 395, Interrogation; Advice of Rights form.

LANESE denied being involved in any sort of gambling activity. He would not answer a question concerning other names by which he has been known, and would answer no questions pertaining to his association with his brother, NICK LANESE of Bridgeport, Connecticut. He advised that any questions pertaining to his involvement with gambling, would not be answered without an attorney present to provide him with advice.

The following description of RICHARD LANESE was obtained through observation and interview:

Date of birth:	August 25, 1939
Place of birth:	Bridgeport, Connecticut
Height:	5 feet 10 inches
Weight:	180 to 185 pounds
Scars or marks:	None
Eyes:	Brown
Hair:	Brown

On 1/19/72 at Milford, Connecticut File # NH 100-16

by SA DANNY F. STEINKE
SA ALAN G. RINGGOLD Date dictated 1/20/72

NH 100-16 175

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FD-302 (REV. 3-17-69)

1.

FEDERAL BUREAU OF INVESTIGATION

Date January 21, 1972

CHARLES SUGLIA, 15 Cromwell Road, Trumbull, Connecticut, with employmentat the L.F. PACE Company, Windsor Street, Bridgeport, Connecticut was interviewed by Special Agents ALAN G. RINGGOLD and DANNY F. STEINER at his ev at assignment, the Wilbur Cross High School, Orange Street, New Haven, Connecticut.

SA RINGGOLD advised SUGLIA of the identity of the interviewing agents, and of the purpose of the interview. He was further advised that he had the right to remain silent and to refrain from answering any and all questions posed. He was further advised that any statement made by him could be used as evidence against him, and that he had the right to consult with an attorney. SUGLIA was presented with an FD 395, interrogation; advice of rights form, which he declined to execute.

SUGLIA advised that he was a book maker. He entered the business in order to make a few extra dollars to live off of. His operation was set up so that he presented bets to another individual, and he was paid a commission of 25 percent of losses. SUGLIA refused to provide the identity of this individual. He said his total receipts of bets varied widely, from one or two hundred on a sporting event to seven or eight hundred. SUGLIA indicated that along with the bets he took from others, he often made bets of his own on games that he thought were likely winners. SUGLIA declined to name any of the bettors, or the person he approached, or who approached him to originate his operation.

WILLIAM BALOG is a person known to SUGLIA. SUGLIA declined to comment when asked of his association with BALOG involved gambling activities. He indicated that he did not wish to implicate anyone else in his operation.

NICK LANESE was a person known to SUGLIA. He is the operator of the New Frontier Restaurant on Main Street, Bridgeport, Connecticut. He and NICK LANESE had met approximately 15 years previously because they were working on a construction job together At that time LANESE had been a union member, and had not owned the New Frontier. Subsequently LANESE was employed in various establishments, to include the Connecticut Distributors, a liquor distributor in Bridgeport. SUGLIA denied that there was an existing gambling tie between him and LANESE.

On 1/20/72 at New Haven, Connecticut File NH 182-46

by SA's ALAN G. RINGGOLD and DANNY F. STEINER/AGR/crw 1/20/72

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SUGLIA mentioned that his gambling activities were never outside of his home. He used that telephone, and when he had to settle with his bettors, the transactions took place in his home. He indicated that it was his habit to obtain one sports line prior to taking bets, but he would not divulge the source of this line.

PAUL MORETTI is also a person known to SUGLIA. He is known as a gambler, as his name appears occasionally in the press as having been arrested for it. However, SUGLIA declined to comment upon his knowledge of MORETTI's operation.

JOHN DELUCIA, ROGER SPINELLI and LOUIS MASTRO are all individuals with whom SUGLIA states he is not acquainted. He is familiar with the name DANNY RICCO. This name was presented to him on an occasion not too long ago, exact date unrecalled, by NICK LANESE. When discussing the FBI Raid on January 1, 1972, LANESE mentioned that RICCO was one of the persons hit, and that his name should be familiar to SUGLIA. SUGLIA had never previously heard the name, and did not know why LANESE thought the name should be familiar to him.

SUGLIA was asked if he knew an individual by name "Jim Pops." He advised that Pops was the owner of Pops Variety which is located several doors away from the Bug Lite Restaurant. He does not know this individual's last name, but believes it begins with the letter L.

SUGLIA denied any gambling connection with this person. He advised that several years previously he had worked as a bartender at the Bug Lite Restaurant, but this employment was terminated as the result of an arrest by the Connecticut State Police. SUGLIA did not recall the date of the arrest, but advised that he had been convicted of book making, and had been sentenced to a fine of $3000 and serving ten days in jail. He advised that this was his only arrest.

The following description of CHARLES SUGLIA was obtained through observation and interview:

Date and Place of birth:	April 15, 1933, Bridgeport, Connecticut
Height:	5'6" to 5'7"
Weight:	220 to 230 pounds
Scars and Marks:	Scar on chin
Hair:	Brown
Eyes:	Brown

FEDERAL BUREAU OF INVESTIGATION

Date June 30, 1972

At approximately 7:03 a.m., Special Agents BRUNI S. MACYS and THOMAS J. MORRIS, accompanied by Detective Lieutenant MICHAEL DEL VECCHIO of the Trumbull, Connecticut Police Department, appeared at the residence at 15 Cromwell Road, Trumbull, Connecticut. A white male, who subsequently identified himself as CHARLES ANTHONY SUGLIA, responded to the door bell and opened the door. SA MACYS identified himself and SA MORRIS as Special Agents of the Federal Bureau of Investigation, and Detective Lieutenant DEL VECCHIO as with the Trumbull Police Department. SA MACYS informed SUGLIA that he was under arrest as a result of a Bench Warrant issued based on an indictment returned by a Federal Grand Jury convened in Hartford, Connecticut, and which indictment charged him with violation of a Federal law having to do with interstate gambling business. He commented at that time, "What took you so long--it's been almost six months".

After permitting SUGLIA to dress and to place telephone calls to his lawyer and to a co-worker, he was transported via Bureau car to the Bridgeport, Connecticut Resident Agency. Enroute, SA MACYS verbally informed SUGLIA of his rights. Enroute, SUGLIA voluntarily stated that he was a small bookmaker; that his "take" was not worth all the trouble caused to him and his family, particularly, the latter; and that since January 1, 1972, he has been "clean". At this point, SA MACYS again informed him of his rights.

Upon arriving at the Bridgeport, Connecticut Resident Agency, SUGLIA was photographed by SA ISAAC M. GRAY and fingerprinted by SA MACYS. On this occasion, SUGLIA read a Warning and Waiver form and executed the same. SUGLIA was not interviewed. He was thereafter turned over to the custody of the United States Marshal, Bridgeport.

The following is a description of SUGLIA as obtained from observation and interview:

Name: CHARLES ANTHONY SUGLIA
Address: 15 Cromwell Road, Trumbull, Connecticut

On 6/29/72 at Trumbull-Bridgeport, Connecticut File # NH 182-46

by SA BRUNI S. MACYS and SA THOMAS J. MORRIS Date dictated
SA ISAAC M. GRAY BSM:ljd 6/30/72

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Race:	White
Sex:	Male
Age:	39
Birth:	April 19, 1923, Bridgeport, Connecticut
Height:	5 feet 7 inches
Weight:	210 pounds
Build:	Stout
Eyes:	Hazel
Hair:	Black-graying; partially bald on top.
Complexion:	Medium
Education:	High School Graduate
Occupation:	Labor Foreman
Employer:	L.F. Pace & Son, 79 Windsor Street, Bridgeport, Connecticut
Social Security Number:	044-26-9430
Military Service:	Served in United States Army 1957-1960, Honorable Discharge, Army Serial Number not recalled
Marital Status:	Married
Immediate Relatives:	Wife-Mrs. SHIRLEY SUGLIA; Daughter-LAURA SUGLIA, age 15; Son-CHARLES SUGLIA, age 13, all residents of 15 Cromwell Road, Trumbull, Connecticut.
Scars and Marks:	Small scar under chin
Prior Arrests:	Summer of 1966 by Bridgeport, Connecticut Police Department, charge Gambling; Disposition-10 days in jail.

FEDERAL BUREAU OF INVESTIGATION

Date January 7, 1972

On January 2, 1972 at 9:00 PM, pursuant to an authorized search warrant, Special Agents DEWEY L. SANTACROCE, ROBERT J. MICHAELS and Detective GEORGE HUSTON, Connecticut State Police, went to the front door of the residence of LOUIS MASTRO, 312 Thorne Street, Bridgeport, Connecticut. Special Agent GARY E. MC MORTER and Detectives LAURENCE G. O'SHEA went to the rear door at this address. Special Agent MICHAELS rang the front door bell and Special Agent SANTACROCE called in a loud clear voice, "This is the FBI. We have a search warrant for this house. Open the door". At this point someone could be heard moving away from the area of the door inside of the house. Special Agent SANTACROCE immediately struck the front door with his shoulder, forcing it open and entered the residence followed by Special Agent MICHAELS and Detective HUSTON.

EDELSTINE MASTRO, wife of LOUIS MASTRO, was walking towards the front door when entry was made, while LOUIS MASTRO was disappearing into the kitchen. Mrs. MASTRO was immediately advised of the identity of the raiding officers and that a search warrant was outstanding. At this point, LOUIS MASTRO exited the kitchen wearing an undershirt and slacks, and was also advised of the identity of the raiding officers and the existance of a search warrant. He was asked to step into the dining room, which he did. It was noted that LOUIS MASTRO had a bulge in his left front trouser pocket, and Special Agent SANTACROCE immediately conducted a pat down of his outer clothing and determined that he was without weapons and that the bulge was a large roll of currency, which was not removed from his pocket. Nothing was taken from his person.

MASTRO's cooperation in the conducting of a quiet, orderly search was elicited. He agreed to cooperate. At this point Detective HUSTON placed on the dining room table four sheets of white paper and one sheet of green paper which he had located under the table cloth on the kitchen table when he had opened the rear door to give access to Detective O'SHEA and Special Agent MC MORTER. LOUIS MASTRO, upon seeing the five sheets of paper, each of which contained numerous bets on sports action, stated "You don't have to search any more, that is all there is. You got it all".

On 1/1/72 at Bridgeport, Connecticut File [redacted]

by SA ROBERT J. MICHAELS, GARY E. MC MORTER, DEW L. SANTACROCE/blv Date dictated 1/5/72

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Special Agent SANTACROCE asked LOUIS MASTRO if the five papers contained the days football action, to which MASTRO replied, "No, the green paper is todays action."

FEDERAL BUREAU OF INVESTIGATION

Date January 31, 1972

NICHOLAS MESSINA, 150 Greenfield St., Bridgeport, Connecticut, employed at the Madison Cascella Bakery, Penbroke St., Bridgeport, Connecticut, was interviewed at his place of employment concerning his affiliation with an illegal gambling operation.

MESSINA was advised of the identity of Special Agents ALAN G. RINGGOLD and DANNY F. STEINKE, and he was advised of the purpose of the interview. He was told that he had the right to remain silent and to refrain from answering any and all questions, and that any statement made by him could be used as evidence against him. He was further advised of his rights to legal counsel, which he waived for the interview. MESSINA was asked to execute an FD 395, interrogation; advice of rights form, but declined.

MESSINA related that he had received a telephone call from a friend, ROBERT FEDELI, from Detroit, Michigan. FEDELI told him that the Federal Bureau of Investigation (FBI) had asked him questions concerning the circumstances of MESSINA's use of his apartment. MESSINA said he had rented the apartment from FEDELI last year and this year, while FEDELI was on the road with a traveling theatre company. This apartment was used by MESSINA to entertain his fiancee, Miss CAIL KOTELSKI of Bridgeport, Connecticut. He did this so that he would have a place to go in the evenings with her, and it was not known to his parents. This year he rented an apartment on Wood Ave., Bridgeport, with another individual. Soon after renting the apartment MESSINA had met his fiancee, so that he used the apartment almost every night. He felt bad taking half of the rent from his friend, so they decided to get out of the venture. MESSINA then let another acquaintance, known only to him as "Fraz" use the apartment exclusively, and "Fraz" paid him the whole monthly rent which MESSINA in turn paid to the management. He then approached RONALD FEDELI, the brother of ROBERT FEDELI, who resided in the same apartment building, and asked him if he could rent ROBERT FEDELI's apartment again. RONALD FEDELI gave him a key to the apartment, and in turn MESSINA paid him the sum of $75 monthly for the use of the apartment.

On 1-21-72 at Bridgeport, Conn. File 182-46

by SA DANNY F. STEINKE
SA ALAN G. RINGGOLD AGENT-IN-CHARGE 182

Date dictated 1-25-72

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He had exclusive use of the apartment. He often had one or two friends over, but none of them was named "NICK". He still has the key to the apartment in his possession, and has had it since October or November 1971.

MESSINA denied using the apartment or the telephone in the apartment to carry on gambling transactions. He denied acting as a bookie, or being a gambler. He advised that he knew NICHOLAS LANESE, the owner of the New Frontier Restaurant, as he, MESSINA, had often been employed as a janitor for that restaurant. LANESE never approached him to ask him to act as a bookie for him, and other than the employment, there was no money passed between the two.

MESSINA further advised that he was unfamiliar with anyone having the name BILL BALCO. He knew a number of persons with the name BILL, but never knew their last names.

MESSINA advised he had twelve uncles, and admitted that one's name was LOUIE ROMANO. He also resided on Greenfield St., several doors away from MESSINA's own home.

The following description of MESSINA was obtained through observation and interview:

Date of Birth:	February 2, 1946
Place of Birth:	Bridgeport, Connecticut
Height:	5'8"
Weight:	165 pounds
Marks:	A tatoo on each shoulder saying "Mom"
Hair:	Brown, curly
Eyes:	Blue
Previous Arrests:	By Bridgeport PD in 1965 or 1966 for fighting.

FD-302 (REV. 3-17-69)

FEDERAL BUREAU OF INVESTIGATION

Date January 20, 1972

WALTER THOMAS HARTY was contacted and was immediately advised of the identities of the interviewing FBI Agents. He was told that the purpose of the interview was to discuss his knowledge of and possible participation in any gambling activities in the Danbury, Connecticut or Bridgeport, Connecticut, areas.

He stated that he has never been a bookie, and he has only bet on sporting events with a bookie.

About two years ago, he met a man in Danbury, Connecticut, known only to him as MAXWELL. HARTY knows nothing about MAXWELL except that he has not been seen in the Danbury area for several months. MAXWELL introduced HARTY to a man known only as BILL. BILL is a bookie. BILL was contacted through Bridgeport telephone number 372-5434 and took HARTY's bets on football and basketball games. HARTY bet on college and professional games. HARTY also had the name of DAVE, who had a Milford telephone number which had the exchange of 878. HARTY could not remember the complete number. He only called DAVE about two or three times and did so because he could not get in touch with BILL at the above Bridgeport number. HARTY never met DAVE. HARTY originally met BILL at the intersection of Connecticut Route 58 and the Merritt Parkway.

HARTY explained that he and five other persons pooled their money to make the bets with BILL. HARTY did not take bets from these people, and they never bet individually. One of these five persons would call a number in New York. This number was connected with the sports publication "Sports Eye". "Sports Eye" told the caller what basketball or football teams had the best chance of winning. HARTY did not get line information from this service. If the information that he received from "Sports Eye" agreed with other sports information they had read about regarding a certain team, the group would decide to bet on that team.

HARTY was initially given a limit of $350.00 that he could bet on a game. This was later increased as his credit became established with BILL. HARTY and BILL paid each other as they won or lost. At no time, was HARTY ever threatened.

On 1/18/72 at Bridgeport, Connecticut File: BI 105-16

by SA HENRY J. KEEN, JR.
SA CHARLES E. [illegible]

Date dictated 1/20/72

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HARTY bet a baseball game on occasion, but he bet and his group bet primarily on football and basketball games.

HARTY described BILL as a white male, about 5 feet 9 inches to 5 feet 10 inches tall, about 35 years of age, about 150 pounds, light hair (receding hair line), and wearing glasses. BILL drove a gold Pontiac Grand Prix with a black top.

HARTY knows of no other bookies in Bridgeport. He could offer no additional information about any possible gambling activity in Bridgeport.

The following description was obtained through observation and interview:

Name:	WALTER THOMAS HARTY
Address:	35 Division Street, Danbury, Connecticut
Date of birth:	January 31, 1942
Place of birth:	Peekskill, New York
Hair:	Black
Eyes:	Blue
Marital Status:	Single
Military:	None
Social Security number:	047-30-5231
Employed:	Connecticut Distributors, Stratford, Connecticut, telephone number 1-800-972-0595 (available only on Friday's as he is a salesman and spends most of time on road.)

HARTY can be contacted through telephone number 743-[illegible], which is that of the Top Hat Restaurant. This restaurant is owned by his mother.

FD-302 (REV. 3 17 69)

FEDERAL BUREAU OF INVESTIGATION

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Date July 3, 1972

WALTER THOMAS HARTY, Danbury, Connecticut, telephonically contacted SA CLARENCE L. SMITH and asked if he could come to the [illegible] Office. He appeared at the Bridgeport, Connecticut Resident Agency of the FBI. He said he had read the indictment presented to him on June 20, 1972. He did not feel that he was in the same category with the other people arrested June 20, 1972. He said the indictment applied to him and the others arrested, however.

He said he had friends who did not wish to be involved in this matter but who would, if necessary, testify for him that they pooled their assets, and through HARTY, caused bets to be made. He said these people would testify that HARTY nor they made money from these bets. He said he knew Bill LAU, with whom he had placed bets at a Bridgeport, Connecticut telephone number. He said each person lost about $1,500.00. He said he did not yet have an attorney, and he said he did not have money to hire a lawyer.

It was explained to Mr. HARTY that he could, by pleading guilty to a felonious crime, he had to state, have an attorney explain to him. He was told that he would be asked to furnish a signed statement detailing his participation in gambling activities, which would be accepted at the present time. Or if he and his attorney later decided that to give such a statement would be in his best interests, such a statement would be accepted.

On [illegible] at [illegible] File # [illegible]

by [illegible] Date dictated [illegible]

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FD-302 (REV. 3 17-69)

FEDERAL BURE[illegible] OF INVESTIGATION

Date July 5, 1972

WALTER THOMAS HARTY, 35 Division Street, Danbury, Connecticut, was apprehended at that residence by SAs ROBERT G. O'NEIL and DONALD S. BATT. The apprehension took place in HARTY's bedroom, where he had been sleeping until roused by the agents. He was immediately advised of the identity of the agents, and that he was being placed under arrest on a Federal warrant, charging him with participation in an illegal gambling business. He was allowed to dress, and was transported in a Bureau automobile directly to the Bridgeport, Connecticut Resident Agency.

Immediately after entering the Bureau automobile, HARTY was furnished a form captioned "Interrogation; Advice of Rights", by SA ROBERT G. O'NEIL. He glanced at the form, said he knew what it said and returned it to SA O'NEIL. He declined to sign the form and said he did not want to talk to the agents regarding the above matters.

Upon arrival at the Bridgeport RA, he was photographed and fingerprinted and thereafter turned over to the U.S. Marshal, Federal Building, Bridgeport.

A description of WALTER THOMAS HARTY, based on interview and observation, is as follows:

RACE	White
SEX	Male
DATE OF BIRTH	January 31, 1942
PLACE OF BIRTH	Peekskill, New York
EYES	Blue
HAIR	Black
HEIGHT	6'2"
WEIGHT	220 pounds
COMPLEXION	Fair
BUILD	Medium
SCARS AND MARKS	None
SOCIAL SECURITY NUMBER	044-30-9231
MARITAL STATUS	Single
OCCUPATION	Manor Salesman Connecticut Distributors 160 Avon Street Stamford, Connecticut

On 6/20/72 at Danbury, Connecticut File # [illegible]

by SA DONALD S. BATT /mcp 10

Date dictated [illegible]

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NH 192-46
RGO/bp
2.

PECULIARITIES	Wears eyeglasses
FORMER RESIDENCE	73 Washington Avenue Danbury, Connecticut, for past 15 years
EDUCATION	High School Peekskill Military Academy Peekskill, New York; graduated 1961 College- University of South Carolina 1962-1966; no degree
MOTOR VEHICLE	1972 Chevrolet Vega; color silver; Connecticut registration WTH-77
FATHER	WALTER JAMES HARTY (deceased 6/16/72, West Palm Beach, Florida)
MOTHER	MARY HARTY 35 Division Street Danbury, Connecticut
BROTHERS	ROBERT HARTY (wife DOREEN) Ridgebury Road Danbury, Connecticut Occupation-Manager, Top Hat Bar, South Street, Danbury, Connecticut PATRICK HARTY (wife VERONICA) 35 Boone Street Danbury, Connecticut Occupation-self employed electrician
ARRESTS	Disorderly Conduct in 1963 at Columbia, South Carolina; charges dismissed

FEDERAL BUREAU OF INVESTIGATION

Date of transcription July 17, 1972

WALTER THOMAS HARTY voluntarily appeared at the Bridgeport, Connecticut Office of the Federal Bureau of Investigation (FBI) and stated he wished to discuss his involvement in gambling activities which led to his arrest on June 29, 1972 by the FBI. He advised he has not retained a lawyer regarding this matter.

HARTY was given a waiver of rights form which he read; stated he understood; and, signed. HARTY advised as follows:

He began betting with a person known as BILL (Last Name Unknown) of Bridgeport, about two years ago. HARTY met BILL through a man named MAXWELL of Danbury, Connecticut. HARTY is a resident of Danbury. MAXWELL gave HARTY a phone number in order to contact BILL. Up until about August, 1971 HARTY placed small bets with BILL. These bets were all HARTY's and he handled no money for anyone else.

In August, 1971, BILL approached HARTY with the idea of bringing BILL more betting action by having HARTY take bets from other persons and phone these bets to BALCO. HARTY received no percentage of any money he took in from other bettors. HARTY merely phoned one figure to BILL on a particular sporting event.

HARTY got together with these other persons who wanted to bet on sporting events and the group would decide on what teams they wanted to bet. HARTY and his friends started betting in this fashion in August, 1971. HARTY would then phone the bets to BILL. BILL was not given a breakdown of bets, but one figure for the group. For example, if HARTY's group decided to bet on a team, no bets were placed by HARTY on the team's opponent. The group bet mostly on football and basketball games. They never played the numbers.

HARTY and his fellow bettors agreed to have HARTY bet with BILL as BILL gave HARTY a 25 per cent rebate of the total losses. The rebate took effect only when the amount of money HARTY lost began to exceed the amount he had previously

Interviewed on 7/7/72 at Bridgeport, Conn. File # BI 135-46

by SA HENRY J. FLYNN, JR.:ljd 2 Date dictated 7/13/72

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won. HARTY elaborated on this by pointing out that during the first few months that he and his group were betting, they were winning. They then began to lose. The rebate on the losses did not take effect immediately. It only began to take effect when the amount of money being lost began to surpass the amount won. At this point, the group would have a negative figure with regard to their betting endeavors.

As previously mentioned, HARTY relayed but one betting figure to BILL and was able to say these bets came from a group of persons. After betting with BILL and losing, BILL would naturally want to be paid. HARTY was able to delay payments to BILL by merely telling him that he was having trouble collecting from members of the group. On occasion, HARTY told BILL that a certain person had left town when in fact HARTY was lying to BILL as there was no such person. By lying to BILL and fabricating bettors HARTY would place additional bets in an attempt to recoup his losses. BILL did not know how many persons were in HARTY's group or how much each person had contributed towards the lump sum bet.

By November, 1971, HARTY was taking action from as many as 10 people who were betting as a group on the same sporting event.

HARTY began to lose and go into debt to BILL. As he went deeper into debt, HARTY began to lie to BILL by telling BILL he was having trouble "collecting" from some members of the group. Because of large gambling losses, HARTY began to borrow money from banks and finance companies. At this time, HARTY owes between eight and ten thousand dollars to the following institutions:

Institution	Amount Owed
State National Bank of Conn., South Street, Danbury, Conn.	About $1600.00
Union Trust Company, Main Street, Danbury, Conn.	About $2000.00

Institution	Amount Owed
Woodbridge Bank and Trust, Main Street, Danbury, Connecticut	About $2000.00
Commercial Credit Corporation, Elm Street, Danbury, Connecticut	About $1000.00
Danbury Finance Company, Main Street, Danbury, Connecticut	About $1200.00

HARTY was given an initial limit of $350.00 which was raised to $1000.00 in about October, 1971.

HARTY also bet with a man in Milford, Connecticut. This man was known only as DAVE. HARTY does not recall DAVE's number.

On occasion, HARTY gave money to TONY CAPASSO to give to BILL. CAPASSO is the warehouse manger at Connecticut Distributors, Stratford, Connecticut, where HARTY is employed. HARTY also went to the New Frontier Restaurant, Bridgeport, Connecticut, in order to pay NICK who owns the New Frontier.

HARTY was told by BILL in late December, 1971 that BILL would send someone to Danbury to collect money "owed" by HARTY. In view of the fact that HARTY lied to BILL in that he had fabricated the persons who bet, HARTY borrowed money from banks and finance companies. HARTY also borrowed about $2000.00 from his mother. HARTY owes BILL about $1200.00.

The following persons bet with HARTY's group and will testify that HARTY is not a bookie:

ROBERT EDWARD HARTY
Danbury, Connecticut
Telephone Number 744-4342

PATRICK JOHN HARTY
25 Cottage Street
Danbury, Connecticut

RICHARD BURKIN
Kohanza Street
[illegible]

[illegible]

DOMINICK LA RICA, Owner,
El Dorado Restaurant,
Danbury, Connecticut

RICHARD DIONE
Danbury, Connecticut

ABRAHAM HADDAD
Route 25,
Newtown, Connecticut

HADDAD owns the Casis Restaurant, Danbury, Connecticut.

RALPH DE RIBURTIS, Danbury,
Connecticut, and is a teacher at the Immaculate High School, Danbury

JEFFREY TAYLOR, Danbury, who works at Danridge Chevrolet, Danbury, Connecticut.

[illegible] agreed to recontact the FBI to further discuss his gambling activities.

4 298 Court 3-A
249 Crim

UNITED STATES DISTRICT COUI

DISTRICT OF CONNECTICUT

CA
FUL
SEP 20 1972
FOR IDENTIFICATION
U. S. DISTRICT COURT
DISTRICT OF CONN.

IN THE MATTER OF THE APPLICATION OF)
THE UNITED STATES FOR AN ORDER)
AUTHORIZING THE INTERCEPTION OF)
WIRE COMMUNICATIONS)

O R D E R

AUTHORIZING INTERCEPTION OF WIRE COMMUNICATIONS

To: Special Agents of the Federal Bureau of Investigation, United States Department of Justice

Application under oath having been made before me by John R. Tarrant, an attorney with the Organized Crime and Racketeering Section of the United States Department of Justice, and an "investigative or law enforcement officer" as that term is defined in Section 2510(7) of Title 18, United States Code, for an order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the court finds:

(A) There is probable cause for belief that Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown, have committed and are committing offenses enumerated in Section 2516 of Title 18, United States Code, that is, conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business, by five or more persons which business has remained in substantially continuous operation for a period in excess of thirty days, is in violation of Connecticut State Statutes 53-295 and 53-298 and Section 1955 and are conspiring to commit such offenses in violation of Section 371 of Title 18, United States Code;

(B) There is probable cause for belief that particular communications concerning these offenses will be obtained through the interception of wire communications, authorization for which is herewith applied for. These wire communications will concern the receipt and dissemination of line information, the nature and extent of this illegal gambling business, the identity and number

of individuals conducting the illegal gambling business, the receipt and placing of bets, wagers and lay off bets, and the duties and responsibilities of known and unknown participants while conducting the illegal gambling business,

(C) Normal investigative procedures reasonably appear to be unlikely to succeed, if tried;

(D) There is probable cause for belief that the telephone facilities located in Apartment C-3 at 215 Barnum Avenue, Bridgeport, Connecticut, bearing telephone numbers 203-333-1224 and 203-336-5976 and listed in the name of Sandra Weisberger, and the telephone facility located in Apartment 46 at 3880 Main Street, Bridgeport, Connecticut, bearing telephone number 203-372-5434 and listed in the name of John Criscuolo have been and are being used by the above-named individuals and others as yet unknown, in connection with the commission of the above described offenses.

WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice, are authorized, pursuant to application authorized by the Acting Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Henry E. Petersen, who was specially designated in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

(a) Intercept wire communications of Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others yet unknown, concerning the above-described offenses, to and from the telephones listed to Sandra Weisberger, located at 215 Barnum Avenue, Bridgeport, Connecticut, Apartment C-3, and bearing telephone numbers 203-333-1224 and 203-336-5976, and the telephone listed to John Criscuolo, located at 3880 Main Street, Bridgeport, Connecticut, Apartment 46, and bearing telephone number 203-372-5434, from 12:00 noon to 8:00 p.m. daily.

(b) Such interception of wire communications shall not automatically terminate when the type of communications described in paragraph (B) above have first been obtained, but shall continue until communications are intercepted which reveal the manner in which Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown, conduct their illegal gambling business, as that term is defined in Section 1955 of Title 18, United States Code, and which reveal the identities of their confederates, their duties and responsibilities, their places of operation and the nature and scope of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this order, whichever is earlier.

It is further ordered, upon request of applicant, that the Southern New England Telephone Company, a communication common carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the Southern New England Telephone Company to be compensated for by the applicant at the prevailing rates.

PROVIDING THAT, this authorization to intercept wire communications shall be executed as soon as practicable after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective or, in any event, at the end of fifteen (15) days from the date of this order.

PROVIDING ALSO THAT, on the fifth and tenth day following the date of this order a report shall be made to the court showing

what progress has been made toward achievement of the authorized objective and the need for continued interception.

M. Joseph Blumenfeld
UNITED STATES DISTRICT JUDGE

Dec 16, 1974
Date

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

APPLICATION OF THE UNITED STATES OF AMERICA IN THE MATTER OF AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS	))))	A P P L I C A T I O N

John R. Tarrant, a Departmental Attorney for the United States Department of Justice, currently assigned to the District of Connecticut, being duly sworn, states:

This sworn application is submitted in support of an order authorizing the interception of wire communications. This application has been submitted only after lengthy discussion concerning the necessity for such an application with various officials of the Organized Crime and Racketeering Section, United States Department of Justice, Washington, D. C., together with agents of the Federal Bureau of Investigation.

1. He is an "investigative or law enforcement officer -- of the United States" within the meaning of Section 2510(7) of Title 18, United States Code -- that is, he is an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.

2. Pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable John N. Mitchell, has specially designated in this proceeding the Acting Assistant Attorney General of the Criminal Division of the United States Department of Justice, the Honorable Henry E. Petersen, to authorize affiant to make this application for an order authorizing the interception of wire communications. The letter of authorization approved by the Acting Assistant Attorney General is attached to this application as Exhibit A.

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3. This application is for an order to intercept wire communications of Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown, concerning offenses enumerated in Section 2516 of Title 18, United States Code, that is, offenses involving the conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business, in violation of Section 1955 of Title 18, United States Code and a conspiracy to commit such offenses in violation of Section 371 of Title 18, United States Code which have been and are being committed by Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown.

Section 803 of Title VIII, entitled Syndicated Gambling of the "Organized Crime Control Act of 1970," Public Law 91-452, 91st Congress, approved October 15, 1970, amended Chapter 95, Title 18, United States Code, by adding a new section, Section 1955, Prohibition of Illegal Gambling Businesses. Section 801 of Title VIII of this Act contains special findings that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof.

4. He has discussed all of the circumstances of these offenses with Special Agent Danny F. Steinke, of the New Haven Office of the Federal Bureau of Investigation who has directed the investigation herein and has examined the affidavit of Special Agent Danny F. Steinke which is incorporated by reference and made a part of this application and attached hereto as Exhibit B which alleges the facts therein in order to show that:

(a) There is probable cause for belief that Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown, have committed and are committing and will continue to commit offenses involving the conducting, financing, managing, supervising, directing or owning all or part of an "illegal gambling business" by five or more persons which gambling business has been in substantially continuous operation for a period in excess of thirty days in violation of Section 1955 of Title 18, United States Code and are conspiring to commit such offenses in violation of Section 371 of Title 18, United States Code.

(b) There is probable cause for belief that wire communications of Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown, concerning these offenses will be obtained through the wire interceptions for which authorization is herewith applied; in particular, these wire communications will concern calls for line and price information, calls from betting customers to place bets and wagers and calls to and from bookmakers to lay off some of the bets and wagers they have accepted. These wire communications also will concern calls from subordinates to superiors for advice and instructions and from superiors to subordinates to give directives relative to the operation of the "illegal gambling business."

(c) Normal investigative procedures reasonably appear to be unlikely to succeed if tried.

(d) There is probable cause for belief that the telephone facilities located in Apartment C-3 at 215 Barnum Avenue, Bridgeport, Connecticut, bearing telephone numbers 203-333-1224 and 203-336-5976, which are listed in the name of Sandra Weisberger, and the telephone facility located in Apartment 46 at 1880 Main Street, Bridgeport, Connecticut, bearing telephone number 203-372-5434, which is listed in the name of John Criscuolo, have been, are being, and will be used in connection with the commission of the offenses described above by the above-named individuals.

5. In making this application for authorization to intercept wire communications, he is relying on all of the facts and circumstances set forth in the affidavit of Special Agent Danny F. Steinke, which is incorporated by reference and made a part of this application as Exhibit B..

6. It is expected further that these communications will show that the amount of gross revenue obtained by this operation in any one single day is in excess of $2,000; that the bookmaking operation is being conducted, financed, managed, supervised, directed or owned by five or more persons and that the operation is in violation of the Laws of the State of Connecticut, 53-295 (pool selling) and 53-298 (policy).

7. Other investigative procedures utilized by the Federal Bureau of Investigation, including contacts with confidential sources and other law enforcement officers, pertinent record examinations,

physical surveillances, and the procedures set forth in the affidavit incorporated by reference into this application, have succeeded in establishing the existence of the "illegal gambling business" being conducted, financed, managed, supervised, directed or owned in whole or in part by Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown, but have been unsuccessful in obtaining sufficient evidence to warrant the making of arrests. The confidential informants will not testify against the above individuals because they fear for their lives. While standard surveillance techniques have had some effect, they have been useful only to confirm that the bookmaking operation described above has taken place. It has not been possible to get an agent or informant who will testify to penetrate the operation. Thus, although there is probable cause to believe that an "illegal gambling business" is being conducted and that the telephones in Apartment C-3 at 215 Barnum Avenue, Bridgeport, Connecticut, namely, 203-333-1224 and 203-336-5976, and in Apartment 46 at 3880 Main Street, Bridgeport, Connecticut, namely, 203-372-5434, are being used in the conduct of the bookmaking operation, there is not now sufficient proof to proceed further with obtaining indictments.

8. No previous applications for authorization or approval to intercept wire or oral communications is known to have been made to any judge involving any of the same persons, facilities or places specified in this application.

WHEREFORE, your affiant believes that probable cause exists for belief that Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown are engaged in the commission of offenses involving the conducting, financing, managing, supervising, directing or owning all or part of an "illegal gambling business" and a conspiracy to commit the above described offenses; that the above-named individuals and others as yet unknown utilize telephones at 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut, namely, 203-333-1224 and 203-336-5976, and the telephone at 3880 Main Street, Apartment 46, Bridgeport, Connecticut, namely, 203-372-5434, to make and receive calls regarding their bookmaking activities in connection with the

commission of the above described offenses; that communications of Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown concerning these offenses will be intercepted to and from the above described telephones; and that normal investigative procedures appear unlikely to succeed if tried.

On the basis of the allegations contained in this application and on the basis of the affidavit of Special Agent Danny F. Steinke, which is attached hereto and made a part hereof, affiant requests this court to issue an order pursuant to the power conferred on it by Section 2518 of Title 18, United States Code authorizing the Federal Bureau of Investigation of the United States Department of Justice to intercept wire communications to and from the above-described telephone facilities until communications are intercepted which reveal the manner in which Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine, and others as yet unknown, participate in conducting their "illegal gambling business" and which reveal the identities of their confederates, their duties and responsibilities, their places of operation, and the nature and scope of the conspiracy involved therein, or for a period of fifteen (15) days from the date of that order, whichever is earlier. It is requested further that the interception of said wire communications be limited to normal horse and sports bookmaking hours from 12:00 noon to 8:00 P.M. daily. It is requested further that reports of the progress of the wire interceptions be made to the court on the fifth and tenth day following the date of that order.

It is further requested that this court issue an order pursuant to the power conferred on it by Section 2518(4)(e) of Title 18, United States Code, directing that the Southern New England Telephone Company, a communication common carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith

all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the Southern New England Telephone Company to be compensated for by the applicant at the prevailing rates.

John R. Tarrant

JOHN R. TARRANT
Special Attorney
U. S. Department of Justice

Subscribed and sworn to before me this
16th day of December, 1971.

M. Joseph Blumenfeld

UNITED STATES DISTRICT JUDGE

ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Department of Justice
Washington 20530

15 DEC 1971

Mr. John R. Tarrant
Special Attorney
Boston Strike Force
Boston, Massachusetts

Dear Mr. Tarrant:

This is with regard to your request for authorization to make application pursuant to the provisions of Section 2518 of Title 18, United States Code, for an Order of the Court authorizing the Federal Bureau of Investigation to intercept wire communications to and from telephone numbers 203-333-1224 and 203-336-5976, located at 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut and 203-372-5434, located at 3850 Main Street, Apartment 46, Bridgeport, Connecticut in connection with the investigation into possible violations of Sections 1955 and 371 of Title 18, United States Code, by Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine and others as yet unknown.

Your request and the facts and circumstances detailed therein have been reviewed and it has been determined that probable cause exists to believe that Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine and others as yet unknown have committed, are committing, or are about to commit offenses enumerated in Section 2516 of Title 18, United States Code, to wit: violations of Sections 1955 and 371 of Title 18, United States Code. It has further been determined that there exists probable cause to believe that the above persons make use of the described facilities in connection with those offenses, that wire communications concerning the offenses will be intercepted, and that normal investigative procedures reasonably appear to be unlikely to succeed if tried.

Accordingly, you are hereby authorized under the power specially delegated to me in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, to make application to a judge of competent jurisdiction for an Order of the Court pursuant to Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Investigation to intercept wire communications to and from the facilities described above, for a period of fifteen (15) days.

Sincerely,

HENRY E. PETERSEN
Acting Assistant Attorney General

EXHIBIT "A"

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Department of Justice
Washington 20530

15 DEC 1971

Mr. John R. Tarrant
Special Attorney
Boston Strike Force
Boston, Massachusetts

Dear Mr. Tarrant:

This is with regard to your request for authorization to make application pursuant to the provisions of Section 2518 of Title 18, United States Code, for an Order of the Court authorizing the Federal Bureau of Investigation to intercept wire communications to and from telephone numbers 203-335-1224 and 203-336-5976, located at 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut and 203-372-5434, located at 3330 Main Street, Apartment 46, Bridgeport, Connecticut in connection with the investigation into possible violations of Sections 1955 and 371 of Title 18, United States Code, by Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine and others as yet unknown.

Your request and the facts and circumstances detailed therein have been reviewed and it has been determined that probable cause exists to believe that Roger L. Spinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine and others as yet unknown have committed, are committing, or are about to commit offenses enumerated in Section 2516 of Title 18, United States Code, to wit: violations of Sections 1955 and 371 of Title 18, United States Code. It has further been determined that there exists probable cause to believe that the above persons make use of the described facilities in connection with those offenses, that wire communications concerning the offenses will be intercepted, and that normal investigative procedures reasonably appear to be unlikely to succeed if tried.

Accordingly, you are hereby authorized under the power specially delegated to me in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, to make application to a judge of competent jurisdiction for an Order of the Court pursuant to Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Investigation to intercept wire communications to and from the facilities described above, for a period of fifteen (15) days.

Sincerely,

HARRY E. PETERSEN
Acting Assistant Attorney General

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	Criminal No. H-298
WILLIAM R. BALOG, et al.	:	
UNITED STATES OF AMERICA	:	
v.	:	
ROGER L. SPINELLI, et al.	:	Criminal No. H-299

AFFIDAVIT

District of Columbia:

John N. Mitchell, being duly sworn, deposes and says:

I held the office of Attorney General of the United States from January 21, 1969, through March 1, 1972.

On December 15, 1971, I approved a request for authority to apply for an interception order in this matter and personally initialed a memorandum of that date reflecting my favorable action on the request. I have examined the original of this memorandum and certify that it bears my initials which were personally affixed by me on December 15, 1971. Attached is a copy of my personally initialed memorandum of that date reflecting my favorable action on the request.

My memorandum of approval in this case constituted a notification to the Assistant Attorney General of the Criminal Division that the discretionary action of approving the request to make application to the court for an interception order had been taken by me.

JOHN N. MITCHELL

Subscribed and sworn to before me
this ____ day of _____, 1972

ROSE L. [illegible]
Notary Public, State of New York
No. 21 [illegible]
Qualified in [illegible] County
Cert. filed in [illegible] County
Term Expires March 30, 1973

Form DJ-150 - (Ed. 4-26-65)

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

DATE: DEC 15 1971

TO : Henry E. Petersen
Acting Assistant Attorney General
Criminal Division

FROM : John [illegible]
Attorney General

SUBJECT: Interception Order Authorization

This is with regard to your recommendation that authorization be given to John R. Tarrant of the Criminal Division to make application for an Order of the Court under Title 18, United States Code, Section 2518, permitting the interception of wire communications for a fifteen (15) day period to and from telephone numbers 203-333-1224 and 203-336-5976 located at 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut and 203-372-5434 located at 3880 Main Street, Apartment 46, Bridgeport, Connecticut in connection with the investigation into possible violations of Title 18, United States Code, Sections 1955, and 371, by Roger L. Sorinelli, John J. DeLucia, William R. Balog, Nicholas V. Lanese, Peter D. Chapdelaine and others as yet unknown.

Pursuant to the powers conferred on me by Section 2516 of Title 18, United States Code, you are hereby specially designated to exercise these powers for the purpose of authorizing John R. Tarrant to make the above described application.

2518

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA v. WILLIAM R. BALOG, et al.	Criminal No. H-298
UNITED STATES OF AMERICA v. ROGER L. SPINELLI, et al.	Criminal No. H-299

AFFIDAVIT

Henry E. Petersen, being duly sworn, deposes and says:

I am Assistant Attorney General in charge of the Criminal Division, United States Department of Justice. At the times of the events related in this affidavit, I was Acting Assistant Attorney General in charge of that Division.

This affidavit describes the processing within the Criminal Division of the Department of Justice of a request for authorization to make application to a Federal court for a wire interception order. The request identified three telephone lines in Bridgeport, Connecticut, which were involved in an investigation implicating Roger L. Spinelli and others.

The formal request for authorization to apply for the mentioned interception order was made by the Director of the Federal Bureau of Investigation. Prior to action on the request, its accompanying file, which included copies of the proposed affidavit, application, and order, was examined in a special Unit of the Organized Crime and Racketeering Section of the Criminal Division by attorneys whose primary function was to scrutinize the entire matter for form and substance with particular emphasis on assuring strict adherence to the required statutory, judicial, and Constitutional standards. The attorneys of that Unit handling the request, James T. Moore, and his supervisor, Philip T. White, examined the file and recommended favorable action on the request. The file was then submitted

for review to James J. Featherstone, a Deputy Chief of the Organized Crime and Racketeering Section, who also recommended approval. Following these examinations and reviews, I reviewed the file and forwarded it to the Office of the Attorney General with a detailed recommendation that the authorization be granted. After approval of the request in the Office of the Attorney General, I signed the letter dated December 15, 1971, to John R. Tarrant advising him that he was authorized to present the application to a judge of competent jurisdiction.

HENRY E. PETERSEN
Assistant Attorney General
Criminal Division

Subscribed and sworn to before me
this 22 day of December, 1972.

My Commission Expires August 31, 1976

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN THE MATTER OF THE APPLICATION OF :

THE UNITED STATES OF AMERICA FOR AN :

ORDER AUTHORIZING THE INTERCEPTION :

OF WIRE COMMUNICATIONS :

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FOR IDENTIFICATION
U. S. DISTRICT COURT
DISTRICT OF CONN.

A F F I D A V I T

DANNY F. STEINKE, Special Agent, Federal Bureau of Investigation, being duly sworn deposes and states:

1. I am an "investigative or law enforcement officer of the United States" within the meaning of Section 2510(7) of Title 18, United States Code -- that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

2. This affidavit is made in support of an application seeking authorization to intercept wire communications concerning offenses involving violation of Section 1955 of Title 18, United States Code, and a conspiracy in violation of Section 371 of Title 18, United States Code, to violate this statute which have been and are being committed by ROGER L. SPINELLI; JOHN J. DeLUCIA; WILLIAM R. BALOG, also known as "Billy"; NICHOLAS V. LANESE, also known as "Nick"; PETER D. CHAPDELAINE, also known as "Pete"; and others as yet unknown.

3. I have supervised and participated in the investigation of these offenses and as a result of my participation in the investigation and of reports made to me by agents under my direction, I am familiar with all circumstances and facts contained in the numbered paragraphs below to show that:

a. There is probable cause to believe that ROGER L. SPINELLI, JOHN J. DeLUCIA, WILLIAM R. BALOG, also known as "Billy"; NICHOLAS V. LANESE, also known as "Nick"; PETER D. CHAPDELAINE, also known as "Pete"; and others as yet unknown, have conspired to commit, have committed, are committing and will continue to commit offenses

involving the conducting of, financing, managing, supervising, directing, or owning all or part of an illegal gambling business, in violation of Connecticut State Statutes 53-295 (pool selling) and 53-298 (policy) by five or more persons, which business has remained in substantially continuous operation for a period in excess of thirty days, and is thereby in violation of Sections 1955 and 371 of Title 18, United States Code;

b. There is probable cause to believe that the telephones listed in the name of SANDRA WEISBERGER, 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut, and bearing telephone numbers 203-333-1224 and 203-336-5976, and the telephone listed in the name of JOHN CRISCUOLO, 3880 Main Street, Apartment 46, Bridgeport, Connecticut, and bearing telephone number 203-372-5434, have been and are being and will be used in carrying out the offenses set out in paragraph 3a above, all of which appear more fully hereafter;

c. Normal investigative procedures reasonably appear unlikely to succeed if tried;

d. The premises at 215 Barnum Avenue, Bridgeport, Connecticut, is a single unit three-story apartment building, which contains approximately twenty-seven apartments. Apartment C-3 is located on the top floor, having a single entrance which opens into a common hallway. The premises at 3880 Main Street, Bridgeport, Connecticut, is a single unit three-story apartment building, containing approximately fifty apartments. Apartment 46 is located on the third floor, overlooking the entrance driveway. It has a single entrance which opens into a common hallway.

FACTS AND CIRCUMSTANCES

During the period of time that the New Haven Office of the Federal Bureau of Investigation has been investigating the illegal bookmaking operation headed by NICHOLAS V. LATORE, information has been gathered principally from three confidential sources whose information is considered to be reliable.

LIEUTENANT JOHN R. SEMBER is the Commanding Officer of the Special Services Division, Police Department, Bridgeport, Connecticut, which division is charged with the responsibility of investigating violations of Connecticut State Gambling Laws. During the period of this investigation, affiant received information from LIEUTENANT SEMBER concerning illegal bookmaking activities in Bridgeport, Connecticut.

In July of 1971, LIEUTENANT SEMBER received information from a confidential informant, who hereinafter will be referred to as Source Number One, concerning illegal gambling activity in the Bridgeport area. LIEUTENANT SEMBER advised that information from Source Number One has proven reliable in the past on three occasions, resulting in the making of four arrests and the obtaining of four convictions.

Source Number One advised LIEUTENANT SEMBER on July 12, 1971, that WILLIAM R. BALOG, who resides at 42 Whittier Street in Bridgeport, Connecticut, had recently told Source Number One that he, BALOG, was operating telephones for a gambling operation at 80 Taft Avenue, Apartment 13, Bridgeport, Connecticut.

Physical surveillances conducted by members of the Special Services Squad of the Bridgeport Police Department during the second week in July, 1971, determined that WILLIAM R. BALOG was at the premises at 80 Taft Avenue, Bridgeport, Connecticut, during normal bookmaking hours.

Source Number One advised LIEUTENANT SEMBER on July 16, 1971, that WILLIAM BALOG was going to change the location of his telephone operation.

Source Number Two has furnished credible information to the New Haven Office concerning criminal activities in the New Haven and Bridgeport areas, including the illegal gambling activities of NICHOLAS V. LANESE, WILLIAM P. BALOG, ROGER L. SPINELLI, JOHN J. DeLUCIA and PETER D. CHAPDELAINE since July, 1971.

During the past five months, Source Number Two has provided confidential information to agents of the New Haven Office on more

than two hundred occasions, which information has been corroborated by visual observations, pertinent record examinations and information from other confidential sources, who are considered reliable, as well as local police agencies. Information supplied by this source has resulted in the issuance of two warrants of arrest. These defendants are presently awaiting trial. Based upon the extent to which independent investigation has corroborated the information provided by Source Number Two, it is believed that this source has not furnished the New Haven Office with any false information.

Source Number Two advised that he has lived in the Bridgeport, Connecticut area all of his life and based upon his experiences as a sports and horse bettor, he is acquainted with that city's gambling operations. Source Number Two advised further that he is personally acquainted with NICHOLAS V. LANESE, who controls the major sports and horse bookmaking operations in the Bridgeport area, and that LANESE resides at 8 Marigold Lane in Trumbull, Connecticut, and is the committee for the New Frontier Restaurant, Inc., 3765 Main Street in Bridgeport, Connecticut.

Source Number Two advised that in August of 1971, NICHOLAS V. LANESE told him that he, LANESE, had thirty people working for him in his bookmaking operation and wanted more for the upcoming football season. According to this source, LANESE stated that he preferred people who have no criminal record and divides the proceeds of his operation by keeping three-quarters for himself and giving one-quarter to his worker. LANESE explained to this source that if a person agrees to work for him as a telephone book, he must furnish LANESE with a reference, which is checked out, and put up a certain amount of capital in order to protect LANESE from serious financial loss.

As part of LANESE'S gambling operation, daily line information is supplied to all his workers by WILLIAM R. BALOG and all workers are required to lay off bets with BALOG, who handles the telephone for LANESE.

LANESE also explained to this source that he sets a limit on how much a worker can in-debt himself to LANESE through lay off to BALOG. This limit is based upon how much capital the worker initially put up and, once reached, LANESE requires immediate settlement. If the limit is not surpassed, settlement takes place every Monday, now Tuesday since Monday night football commenced, by leaving an envelope at the bar of the New Frontier Restaurant with the name NICK LANESE written on it.

Source Number Two advised that in August, 1971, he placed a couple of bets in an amount in excess of $1,000 directly with NICHOLAS V. LANESE at the New Frontier Restaurant. According to this source, LANESE told him that he, LANESE, will accept bets at the New Frontier if the bets amount to $1,000 or more, but if the bet is less than $1,000, he prefers that it be phoned to WILLIAM BALOG.

Source Number Two advised that in a conversation with ROGER L. SPINELLI on August 31, 1971, Source Number Two was told that he, SPINELLI, operates a telephone book at telephone numbers 335-6384 and 333-1224 for NICHOLAS LANESE, obtaining his line information and pushing out his lay-off acti to WILLIAM BALOG. Source Number Two further advised that during September and October, 1971, he personally placed sports bets with ROGER SPINELLI, JOHN DeLUCIA and one "Pete," whose last name he does not know, by calling telephone numbers 335-6384 and 333-1224.

Records of the Southern New England Telephone Company, New Haven, Connecticut, reveal that telephone number 203-335-6384 is resident service listed for SANDRA WEISBERGER, 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut, installed August 11, 1971, and that telephone number 203-333-1224 is an auxiliary line listed for SANDRA WEISBERGER, 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut, installed August 16, 1971. However, affiant could find no record of a SANDRA WEISBERGER in checking the Police Department, Credit Bureau, Tax Assessor's Office, Voter Register and City Directory in Bridgeport, Connecticut.

On September 27, 1971, Source Number Two advised that on that date he called telephone number 333-1224 and was informed by ROGER SPINELLI that he was still obtaining the betting line from WILLIAM BALOG. That same date, Source Number Two placed bets with ROGER SPINELLI over telephone number 333-1224, at which time this source recognized JOHN DeLUCIA's voice in the background.

Source Number Two advised that around noontime on October 11, 1971, he called telephone number 333-1224 for the purpose of placing a bet. The telephone was answered by an unidentified female who inquired of this source his purpose in calling. After this source informed the female that he wanted to place a bet, she replied, "Call back, 'Pete' is supposed to be here at twelve o'clock and 'Roger' will be here at one o'clock."

Physical surveillances conducted by agents of the New Haven Office of the Federal Bureau of Investigation at the premises at 215 Barnum Avenue, Bridgeport, Connecticut, on an average of three times a week during the months of September and October, 1971, revealed ROGER L. SPINELLI, JOHN DeLUCIA and PETER D. CHAPDELAINE enter and depart that premise during normal bookmaking hours.

Source Number Two explained that, based upon his betting activity during September and October, 1971 over telephone numbers 333-6384 and 333-1224, he can state that ROGER SPINELLI and JOHN DeLUCIA operate the aforementioned telephones during the afternoon and evening bookmaking hours, but that "Pete," whose last name he does not know, handles the phones during the afternoon hours.

Records of the Southern New England Telephone Company, New Haven, Connecticut, reveal that telephone number 203-335-6384, resident service listed for SANDRA WEISBERGER, 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut, was changed on October 15, 1971 to telephone number 203-336-5976, and that telephone number 203-333-1224 continues to be an operating number listed for SANDRA WEISBERGER, 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut.

During the last week of October, 1971, Source Number Two advised that on October 20, 1971, NICHOLAS LANESE stated that he could be reached through WILLIAM BALOG at telephone number 372-5434. Source Number Two further advised that on that date he called telephone number 372-5434 and obtained line information from BALOG, after which he placed a bet with ROGER SPINELLI over telephone number 333-1224.

Records of the Southern New England Telephone Company, New Haven, Connecticut, reveal that Bridgeport, Connecticut, telephone number 203-372-5434 is resident service listed to JOHN CRISCUOLO, 3880 Main Street, Apartment 46, Bridgeport, Connecticut, installed July 26, 1971. Records of the Southern New England Telephone Company further reveal that JOHN CRISCUOLO has resident telephone service at two other locations in Connecticut, one in East Haven since May 6, 1971 and the other in New Haven since August 27, 1968.

Records of the Mildred Higgins Realty Company reveal that JOHN CRISCUOLO, when renting Apartment 46 at 3880 Main Street, Bridgeport, Connecticut in July, 1971, stated that he had been employed as a salesman since 1964 for a firm in Stratford, Connecticut, known as the Connecticut Distributors.

Physical surveillance of WILLIAM R. BALOG on October 22, 1971, revealed that he departed his residence, 42 Whittier Street, at 11:30 A.M. and drove to Ponzi's News and Variety Store, Main Street, Bridgeport, behind which he parked his automobile. After obtaining a newspaper, BALOG walked to 3880 Main Street, entering those premises at approximately 12:21 P.M. Surveillance further revealed that BALOG departed 3880 Main Street at approximately 2:28 P.M., walked to his automobile and then drove to the New Frontier Restaurant. BALOG was observed entering the New Frontier through the rear entrance about 2:30 P.M.

On November 3, 1971, Source Number Two advised that he was informed by JOHN DeLUCIA during the first week of November, 1971, that DeLUCIA, SPINELLI and "Pete," whose last name he does not know, continue to operate for LANESE at telephone number 333-1224 and they continue to obtain their line information from, and give lay-off bets on telephone number 372-5434.

Source Number Three has furnished credible information to the New Haven Office concerning illegal gambling activities in the Bridgeport, Connecticut area on a regular basis for the past two years. Information provided by this source has led to the arrest and conviction of six individuals.

On October 13, 1971, Source Number Three advised that NICHOLAS LANESE is conducting a sports bookmaking operation in the Bridgeport, Connecticut area and has working for him the son of DOCTOR SPINELLI, who has been identified through supplemental investigation as ROGER L. SPINELLI. Source Number Three advised that he obtained this information through recent conversation with NICHOLAS LANESE.

Physical surveillance of WILLIAM R. BALOG on November 5, 1971 revealed that he drove to Ponzi's News and Variety Store, Main Street, Bridgeport, behind which he parked his automobile. After obtaining a newspaper and sports sheet, BALOG walked to 3880 Main Street, entering that premises at approximately 12:00 noon.

On November 17, 1971, Source Number Two advised that ROGER L. SPINELLI continues to operate at telephone number 333-1224 and that WILLIAM R. BALOG continues to operate at 372-5434. Source Number Two explained that on November 14, 1971, he telephoned BALOG at telephone number 372-5434 and obtained the sports line. Source Number Two further explained that on November 15, 1971 he telephoned number 333-1224 and obtained the sports line from JOHN J. DeLUCIA.

Source Number Two further advised that, based upon his personal dealings with ROGER SPINELLI, WILLIAM BALOG, "Pete," whose last name he does not know, and JOHN DeLUCIA over the telephone during August, September, October and November of this year, he knows that the bookmaking hours for this operation are: During the week from approximately 12:00 noon until approximately 2:30 P.M. and from approximately 6:00 P.M. until approximately 8:30 P.M.; on Saturday from approximately 12:00 noon until approximately 4:00 P.M. and from approximately 6:00 P.M. until 9:00 P.M.; and on Sunday from

approximately 12:00 noon until approximately 4:00 P.M., sometimes extending later depending on the times of the West Coast games.

Physical surveillance of ROGER L. SPINELLI on November 26, 1971 revealed that he was at the premises at 215 Barnum Avenue, Bridgeport, Connecticut, at approximately 2:30 P.M.

Physical surveillance of WILLIAM R. BALOG on November 26, 1971 revealed that he departed the premises at 3880 Main Street, Bridgeport, Connecticut, at approximately 2:30 P.M. and walked to the New Frontier Restaurant.

On November 29, 1971, Source Number One advised LIEUTENANT SEMBER that WILLIAM BALOG, on that date, informed Source Number One that he, BALOG, was operating at telephone number 372-5434 for NICHOLAS LANESE's gambling operation. According to this Source, BALOG described his activities as accepting bets from LANESE's customers, taking lay-off bets from and supplying line information to operators of LANESE's books.

Source Number Two advised that during the last week of November, 1971, he spoke with JOHN DeLUCIA at telephone number 333-1224 and was informed that he (DeLUCIA), ROGER (SPINELLI) and PETE (CHAPDELAINE) continue to operate at that number and also at telephone number 336-5976, which number replaces telephone number 335-6384, and they continue to obtain this line information from, and give lay-off bets to, BALOG at telephone number 372-5434. This Source further advised that during November, 1971, and as recently as the week beginning November 29, 1971, he personally placed sports bets with ROGER (SPINELLI), JOHN (DeLUCIA) and PETE (CHAPDELAINE) at telephone numbers 335-5976 and 333-1224.

On November 29, 1971, Source Number Three advised that he learned from conversation with NICHOLAS LANESE on that date that LANESE continues to operate a sports book in the Bridgeport, Connecticut area and continues to have (ROGER) SPINELLI handling telephones for him.

On December 15, 1971, Source Number Two advised that during the week of December 6, 1971 he called telephone number 333-1224 and placed a sports bet with ROGER (SPINELLI).

NEED FOR INTERCEPTION

The interception of communications is necessary to the investigation for the following reasons:

1.) The confidential informants described herein have categorically refused to testify in open court for fear of their safety, even though granted immunity.

2.) Without the testimony of the above-mentioned informants, it would be exceedingly difficult to prove the complete nature of the current gambling operation of ROGER L. SPINELLI, JOHN J. DeLUCIA, NICHOLAS V. LANESE, WILLIAM BALOG and PETER D. CHAPDELAINE.

3.) It is doubtful that a search warrant, if obtained and executed, would result in obtaining gambling records reflecting the complete nature of the gambling operation. From my experience and the experiences of other Agents, I know that gambling raids and searches of gamblers and their gambling establishments have not in the past resulted in the gathering of physical or other evidence to prove all elements of the offenses. I have found through my experience and the experiences of other Special Agents, who have worked gambling cases that if records are maintained, gamblers, immediately prior to or during the physical search, sometimes destroy these records. Additionally, records that have been seized in past gambling cases have generally not been sufficient to establish all of the elements of federal offenses because these records are difficult to interpret and many times are of little or no significance without further knowledge of the gambler's activity.

4.) There are no known witnesses who could be relied upon to truthfully testify to the violation in question.

5.) The premises at 215 Barnum Avenue and 3880 Main Street are multiple apartment dwellings. It is, therefore, impossible, through physical surveillance, to observe the subjects of this investigation operating the telephones. It is also impossible, through physical surveillance, to observe the subjects entering or leaving the aforementioned apartments without detection. Through visual observations, it is merely possible to place the subjects at the

premises where their bookmaking operations are located.

6.) Due to the manner in which the violations are carried out, the interception of wire communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove the commission of this violation.

7.) For reasons set out above, all normal avenues of investigations, except contacts with confidential sources, are closed, and the only feasible way to develop the necessary evidence of a violation of Title 18, United States Code, Section 1955 and Section 371 by ROGER L. SPINELLI, JOHN J. DeLUCIA, NICHOLAS V. LANESE, WILLIAM BALOG, PETER D. CHAPDELAINE and others, is the interception of wire communications from telephone numbers 203-333-1224 and 203-336-5976, listed to SANDRA WEISBERGER, 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut, and telephone number 203-372-5434, listed to JOHN CRISCUOLO, 3880 Main Street, Apartment 46, Bridgeport, Connecticut.

Normal investigative procedures have not been successful and reasonably appear not to succeed if further tried.

No other application has been made for interception for wire communications from the above-described premises or any other facilities or premises with any of the other subjects named in this affidavit.

In view of the information developed as set forth above, that the activity to be electronically covered is believed to represent a continuing criminal conspiracy, it is further believed that the evidence sought through the interception of these communications should be obtained on a continuing basis on several days succeeding the first receipt of communication which is the objective of this request, not to exceed fifteen days, so that the entire scope of the conspiracy, together with the identification of participants therein, can be established. Therefore, it is requested that these interceptions not terminate when the sought communications are first obtained and that this authority continue for a reasonable period thereafter.

Wherefore, I submit that probable cause exists to believe the existence of facts as set out hereinbefore.

Danny J. Steinke, Special Agent FBI
DANNY J. STEINKE, Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me this
16th day of December, 1971.

M. Joseph Blumenfeld
UNITED STATES DISTRICT JUDGE

4298 Court 17
299 EXHIBIT
CA
FULL
SEP 26 1972
FOR IDENTIFICATION
U. S. DISTRICT COURT
DISTRICT OF CONN.

UNITED STATES DISTRICT COU

DISTRICT OF CONNECTICUT

IN THE MATTER OF THE APPLICATION OF)
THE UNITED STATES FOR AN ORDER)
AUTHORIZING THE INTERCEPTION OF)
WIRE COMMUNICATIONS)

REPORT TO THE COURT

On December 16, 1971, this court entered an order authorizing the interception of wire communications to and from telephone numbers 203-333-1224 and 203-336-5976 listed in the name of Sandra Weisberger and located at 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut, and telephone number 203-372-5434 listed in the name of John Criscuolo and located at 3880 Main Street, Apartment 46, Bridgeport, Connecticut, for a period of fifteen (15) days. Thi court further ordered that a report be made to the court on the fifth day following the date of the court's order of December 16, 1971, showing what progress has been made to date, achievements of the authorized objective and the need for continued interception.

Pursuant to this court's order interception of wire communications to and from telephone numbers 203-372-5434 commenced at 1:30 P.M. on December 17, 1971 and telephone numbers 203-333-1224 and 203-336-5976 commenced at 6:00 P.M. on December 17, 1971.

This report is based upon information supplied to the undersigned by Special Agent Danny F. Steinke of the Federal Bureau of Investigation. This information is based upon logs made during the course of electronic surveillance by the Special Agents actively conducting the wire interception under the supervision of Special Agent Steinke. Logs are handwritten notes made at the time of the interception which briefly summarize the communications but would not purport to be a verbatim transcription of the interceptions made.

The logs indicate that the probable cause set forth in Special Agent Steinke's affidavit of December 16, 1971, in support of the application to intercept wire communications has been substantially confirmed. Intercepted conversations reveal that Nicholas V. Lanese conducts, finances, manages, supervises, directs or owns all or part of a large scale bookmaking operation in the Bridgeport, Connecticut, area, which he oversees from the New Frontier Restaurant, 3765 Main Street, Bridgeport, Connecticut. Intercepted conversations further reveal that Roger L. Spinelli and John J. DeLucia at telephone numbers 203-333-1224 and 203-336-5976 and William R. Balog at telephone number 203-372-5434 handle a major portion of the betting activity for Lanese. Intercepted conversations further reveal that Lanese's operation employs approximately eighteen (18) runners or agents of whom four (4) have been identified who take betting action for Spinelli, DeLucia and Balog and telephone it to them at their respective locations.

In addition the intercepted conversations reveal that individuals indebted to Lanese's operation in excess of an amount pre-determined by him have to settle their account with Nicholas V. Lanese before they can continue to participate in his gambling operation.

Intercepted conversations to date have failed to reveal Peter D. Chapdelaine's participation in the Lanese gambling operation as outlined in the affidavit of probable cause. Physical surveillances conducted during the period of the wire intercept have failed to establish Peter D. Chapdelaine's presence at 215 Barnum Avenue, Bridgeport, Connecticut. Based upon his absence from the book location during the referred to prime bookmaking period, it is now felt that the interception of Peter D. Chapdelaine while he is participating in Lanese's bookmaking operation is unlikely.

The logs containing the summary of information obtained from the wire interceptions above referred to from December 17, 1971, through and including December 20, 1971, are attached hereto and made a part of this report. Logs designated NH DC/CT-20 refer to telephone number 203-327-5434. Logs designated NH DC/CT-19 refer to telephone

number 203-336-5976 and logs designated NH DC/CT-18 refer to telephone number 203-333-1224.

Based upon the aforementioned information and the material set forth in the attached logs it has been determined that sufficient evidence has been obtained from the authorized interception for further electronic surveillances to cease; therefore, the Federal Bureau of Investigation terminated wire interceptions at 7:45 P.M. on December 20, 1971.

It is requested that this court seal and impound this report unless and until this court should order otherwise.

John R. Tarrant

John R. Tarrant, Special Attorney
United States Department of Justice

The above report and attachments and tapes (separately sealed) is hereby ordered sealed and impounded until further ordered by the Court.

dated Dec 21, 1971.

M Joseph Blumenfeld

Attachments

LABORATORY

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

To: SAC, New Haven (182-46)

FBI File No. 182-7

Re: JOSEPH L. SCALZITTI;
JOHN J. DE LUCIA;
NICHOLAS V. LANESE;
WILLIAM R. BALOG;
IGB
MAX J. GORDON,
AFO (CO: NEW HAVEN)

Date received 5/15/72

Qc76 Photocopy of transcript and log of conversation intercepted, identified as "NHDC CT #18 12/17/7 Reel 1 and 2"

Qc77 Photocopy of transcript and log of conversati intercepted, identified as "USDC #18 12/18/71 DAY"

Qc78 Photocopy of transcript and log of conversati intercepted, identified as "NHDC CT #15 Log /71 (Sunday)"

Qc79 Photocopy of transcript and log of conversati intercepted, identified as "NHDC #18 12/20/7 1 Log 4"

Qc80 Photocopy of transcript and log of conversati intercepted, identified as "USDC CT #19 12/17/ 1 and 2"

Qc81 Photocopy of transcript and log of conversati intercepted, identified as "USDC CT #19 12/1 1"

Qc82 Photocopy of transcript and log of conversati intercepted, identified as "USDC CT #19 12/1

Qc83 Photocopy of transcript and log of conversati intercepted, identified as "USDC CT #19 12/20/ 1 Log 4"

Qc84 Photocopy of transcript and log of conversati intercepted, identified as "USDC CT #20 12/17/ 1, 2, & 3"

(Continued on next page)

Qc85 Photocopy of transcript and log of conversations intercepted, identified as "NHDC CT #20 12/18/71 Reels 1, 2, 3 & 4"

Qc86 Photocopy of transcript and log of conversations intercepted, identified as "USDC CT #20 Log 3 12/19/71 Reels 1, 2 & 3"

Qc87 Photocopy of transcript and log of conversations intercepted, identified as "NHDC CT #20 Log 4 Monday 12/20/71 Reel 1, 2 & 3"

Results of examination:

The persons whose intercepted telephone conversations were shown on Qc76 through Qc87 were engaged in a gambling operation by accepting and transmitting wagers on sports events and horse races.

The following total wagers were noted:

Specimen	Date	Amount	
Qc76	12/17/71	$ 6,820.00	
Qc77	12/18/71	18,441.00	
Qc78	12/19/71	10,610.00	
Qc79	12/20/71	2,871.00	
Total			$38,742.00
Qc80	12/17/71	$ 7,145.00	
Qc81	12/18/71	3,851.00	
Qc82	12/19/71	5,520.00	
Qc83	12/20/71	220.00	
Total			$16,736.00
Qc84	12/17/71	$ 9,195.00	
Qc85	12/18/71	15,450.00	
Qc86	12/19/71	7,000.00	
Qc87	12/20/71	2,330.00	
Total			[illegible]
Total all specimens			$89,[illegible].00

The conversations followed the same general pattern. At the beginning of each day the basketball and football "line" or point spread was received from one or more persons and compared. The persons utilizing the intercepted telephones then furnished this line to prospective bettors. Thereafter, the bettors furnished wagers based upon the line. Many calls also included discussions of the outcome of games and the status of various wagering accounts.

It could be determined that some of the persons placing wagers were bookmakers themselves, wagering on teams when they felt they had too many wagers on those teams and in order to prevent the possibility of large losses, referred to as "lay-off." Other callers were either runners or writers accepting wagers in behalf of the persons utilizing the intercepted telephones. These persons merely transmitted these wagers and were generally determined to be receiving a commission of 25 per cent. Other persons placing wagers were simply bettors placing wagers for themselves.

Most of the amounts of the wagers were disguised, e.g. "five times" was a wager of $25.00, the word "times" meaning "times five."

Wagers were also found on horse races and a limited number of wagers on three-digit numbers.

A person referred to in the specimens as "Nick" occupied the position as the superior of the persons utilizing the intercepted telephones and frequently issued instructions and followed the wagering activity.

The submitted material is being returned separately.

FBI LABORATORY

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

SAC, New Haven (182-46)

ROGER L. SPINELLI;
JOHN J. DE LUCIA;
WILLIAM R. BALOG;
NICHOLAS V. LANESE;
PETER D. CHAPDELAINE
IGB

Date: March 15, 1972
FBI File No. 182-702
Lab. No. G-00532 OD
E-1352 MX

Items received 2/28/72

(Your item 3, Team 1)
Q1 Two sheets of white paper bearing handwritten notations such as "Key - 8"

(Your item 4, Team 1)
Q2 Three sports schedules and one "THEME BOOK" bearing handwritten notations such as "ED 40803"

(Your item 5, Team 1)
Q3 Six cards and two ticket stubs, "No. 33709" and "No. 55515," bearing handwritten notations such as "Norman owes 110 (encircled)"

(Your item 9, Team 1)
Q4 Four envelopes captioned "Robertshaw" containing numerous slips of paper bearing handwritten notations such as "151-50"

(Your item 1, Team 3)
Q5 Partial newspaper captioned "SPORTS ACTION January 6, 1972"

(Your item 2, Team 3)
Q6 Two "The National Armstrong Daily News Review" for Thursday, December 30, and Friday, December 31, 1971

(Your item 6, Team 3)
Q7 One tablet of plain white paper

(Your item 8, Team 3)
Q8 One notebook captioned "MONTAG'S SHOPPING LIST" bearing handwritten notations such as "Come Outcome"

(Your item 9, Team 3)
Q9 Numerous sheets of plain white paper

(Continued on next page)

(Your item 10, Team 3)
Q10 Numerous sheets of paper bearing handwritten notations such as "Phil 625-25"

(Your item 11, Team 3)
Q11 Numerous sheets of paper, water-marked "FOUR STAR ONION SKIN"

(Your item 2, Team 4)
Q12 One sheet of paper bearing handwritten notations such as "Auburn - 30X"

(Your item 3, Team 4)
Q13 One sports publication captioned "FOOTBALL NEWS and SCHEDULE FINAL 1971 SCHEDULE"

(Your item 4, Team 4)
Q14 One sports publication captioned "WEEKLY BASKETBALL NEWS and SCHEDULE FOR GAMES ENDING SUNDAY, JANUARY 2, 1972"

(Your item 5, Team 4)
Q15 One bag captioned "SWEET LIFE" containing numerous sheets of paper bearing handwritten notations such as "Oak 6 7 Yanks 430"

(Your item 14, Team 4)
Q16 Numerous slips of paper bearing handwritten notations such as "Jerry. B - 216"

(Your items 7, 9, 11, 13, 15, 17, Team 4)

Q17 Four envelopes captioned "P. Conte 5 Craig Drive Monroe, Conn. 06468" bearing handwritten notations such as "Greer" containing slips of paper bearing handwritten notations such as "2-13-46 8[illegible]," two typed sheets of paper bearing numbers such as "-6," one "Champion" notebook bearing handwritten notations such as "Sabe 1593"

(Your item 3, Team 5)
Q18 Numerous sheets of white paper bearing handwritten notations such as "Iowa 7½"

(Your item 4, Team 5)
Q19 One "WEEKLY BASKETBALL NEWS and SCHEDULE FOR GAMES ENDING SUNDAY, DECEMBER 26, 1971"

(Your item 5, Team 5)
Q20 Four sheets of white paper bearing handwritten notations such as "W 55.00"

(Your item 5, Team 6)
Q21 Two plain sheets of tissue paper

(Your items 6, 7, Team 6)
Q22 Numerous sports publications and copies of "The National Armstrong Daily News Review"

(Your item 8, Team 6)
Q23 One simulated alligator pocket billfold containing numerous slips of paper bearing handwritten notations such as "105 P"

(Your items 9, 10, 12, 13, Team 6)

Q24 Eight copies of "The National Armstrong Daily News Review," numerous sheets and slips of white paper bearing handwritten notations such as "Tuck Tex-5 105"

(Your item 1, Team 7)
Q25 Five sheets of paper bearing handwritten notations such as "Dan + 380"

(Your item 7, Team 7)
Q26 Numerous blank sheets of white paper

(Your item 13, Team 7)
Q27 Sheet of paper bearing handwritten notations such as "Oakl."

(Your item 15, Team 7)
Q28 Slip of paper bearing handwritten notations such as "1st Race - Change Castle"

(Your item 16, Team 7)
Q29 One slip of paper bearing handwritten notations such as "SEA LEVEL"

(Your item 17, Team 7)
Q30 One slip of paper bearing handwritten notations such as "Monticello"

(Your item 20, Team 7)
Q31 One envelope captioned "RUST CRAFT GREETING CARDS, INC." bearing handwritten notations such as "A 7 Alto Biografie"

(Your item 3, Team 9)
Q32 Numerous copies of "WEEKLY BASKETBALL NEWS and SCHEDULE"

(Your item 1, Team 10)
Q33 One "ONE SUBJECT NOTEBOOK" containing loose sheets of paper bearing handwritten notations such as "W Hustoni"

(Your item 1, Team 11)
Q34 One sheet of paper bearing handwritten notations such as "Bob V 350000"

(Your items 2, 3, Team 11)
Q35 Numerous printed cards and stubs of printed cards bearing handwritten notations such as "3 7 12 17 22"

(Your item 5, Team 11)
Q36 Numerous slips of paper bearing handwritten notations such as "Bally - 650.00," numerous printed cards and copies of sports publications

(Your items 6, 7, Team 11)
Q37 Numerous stubs of printed cards and slips of paper bearing handwritten notations such as "E 450 100 - X"; one writing tablet captioned "King Script" bearing handwritten notations such as "Doug 1786 (encircled)"

(Your item 1, Team 12)
Q38 One "WEEKLY BASKETBALL NEWS and SCHEDULE FOR GAMES ENDING SUNDAY, JANUARY 2, 1972"

(Your item 2, Team 12)
Q39 One "CORONET THEME BOOK" bearing handwritten notations such as "1 Flower Pot 2 - 2"

(Your item 3 found in item 2, Team 12)
Q40 One copy of "BASKETBALL NEWS and SCHEDULE FOR GAMES ENDING SUNDAY, DECEMBER 19, 1971"

(Your item 4 found in item 2, Team 12)
Q41 One "WEEKLY FOOTBALL NEWS and SCHEDULE FINAL 1971 SCHEDULE"

(Your item 5 found in item 2, Team 12)
Q42 Six sports publications bearing handwritten notations such as "Ten 3," six copies of "Yonkers Raceway Charts" and "YONKERS RESULTS," two sheets captioned "YONKERS CHARTS," one top portion of a printed card, one slip of paper bearing handwritten notations such as "2 if 3-0-2 + Rev"

(Your item 6 found in item 1, Team 12)
Q43 Two envelopes captioned "Mr. Edward Stoll..." and five sheets of paper bearing handwritten notations such as "OKLA Lose"

(Your item 1, Team 13)
Q44 Two slips of paper bearing handwritten notations such as "Jim V 5-20 40 T"

(Your item 2, Team 13)
Q45 Numerous sheets of paper bearing handwritten notations such as "Drake Iowa $7\frac{1}{2}$"

(Your item 4, Team 13)
Q46 One large shopping bag containing numerous slips of paper bearing handwritten notations such as "Joe Vin Pitt 50 T 157 Game"

(Your item 5, Team 13)

Q47 Numerous sheets of plain white paper

(Your item 3, Team 15)

Q48 One sports publication captioned "the FOOTBALL news," one sports publication captioned "pro football weekly," one book captioned "O'CONNOR'S 1971 PRO-GRID DATA," one sports publication captioned "FOOTBALL NATIONAL WEEKLY," one folder for "FOOTBALL NATIONAL WEEKLY," one sports publication captioned "THE GOLD SHEET," two envelopes bearing return address "All Sports Publications Corp...," two sheets captioned "1971-72 TV FOOTBALL GUIDE PROFESSIONAL/COLLEGIATE," one card bearing handwritten notations such as "M 412 Tenn," one sheet of paper bearing handwritten notations such as "1-213-985-8880"

(Your item 4, Team 15)
Q49 Numerous sports publications and copies of sports publications

(Your item 6, Team 15)
Q50 One notebook captioned "Roll Book" bearing handwritten notations such as "Vin 268-8045" containing numerous sports publications and loose papers

(Your item 7, Team 15)
Q51 Numerous sports publications and copies of sports publications some bearing handwritten notations such as "St John - $14\frac{1}{2}$"

(Your item 8, Team 15)
Q52 Eight sports publications captioned "GOLD SHEET"

(Your item 10, Team 15)
Q53 One sheet and one slip of paper bearing handwritten notations such as "3349542"

(Your item 11, Team 15)
Q54 Numerous business cards and slips of paper bearing handwritten notations such as "Vuitch EX-31326"

(Your item 2, Team 16)
Q55 Two slips of paper bearing handwritten notations such as "Ray A-21 -24"

(Your item 3, Team 16)
Q56 Numerous sheets of paper and torn slips of paper bearing handwritten notations such as "12 Houst 100 LSU 66," and various sports publications

(Your item 4, Team 16)
Q57 One newspaper, three sports publications, two slips of plain white paper, miscellaneous receipts and personal papers, one sheet of paper bearing handwritten notations such as "432.79"

(Your item 5, Team 16)
Q58 Numerous sheets of plain white paper

(Your item 6, Team 16)
Q59 Numerous sports publications, one book captioned "O'CONNOR's 1971 PRO-GRID DATA," one slip of paper bearing handwritten notations such as "Kid Colo - 4 300 OK," two envelopes containing personal bills

(Your item 7, Team 16)
Q60 Two slips of paper bearing handwritten notations such as "Ralph 9 + 5 ...," one sheet of paper bearing handwritten notations such as "Tues Dec 21," four sports publications captioned "The National Armstrong Daily News Review"

(Your item 9, Team 16)
Q61 Numerous sheets of paper bearing handwritten notations such as "Balt $5\frac{1}{2}$ S. F. $4\frac{1}{2}$"

(Your item 14, Team 16)
Q62 Three sheets of paper bearing handwritten notations such as "Kid + 2930."

(Your item 2, Team 17)
Q63 Two black boxes, each approximately 1½" x 2 3/4" x 4" with wires attached thereto; one plastic container containing numerous screwdrivers

(Your item 5, Team 17)
Q64 One sports publication captioned "SPORTS EYE"

(Your item 6, Team 17)
Q65 One large bundle of white paper

(Your item 8, Team 17)
Q66 White telephone with black box approximately 1½" x 2 3/4" x 4" attached thereto with wires

(Your items 9B, 9C, Team 17)
Q67 One slip of plain white paper, one torn piece of a sports publication bearing handwritten notations such as "B C Lasalle 5 4 4," numerous sheets of plain white paper

(Your item 2, Team 18)
Q68 One notebook captioned "Steno" containing handwritten notations such as "Barney $25.00 - 12.00"

(Your item 4, Team 18)
Q69 Eight torn slips of paper bearing handwritten notations such as "OKL. Auburn," one adding machine tape

(Your item 5, Team 18)
Q70 Numerous slips of paper bearing handwritten notations such as "Mc 105.00," one adding machine tape

(Your item 9, Team 18)
Q71 Two printed cards, 'No. 44604" and "No. 44605"

(Your item 20, 22, Team 18)
Q72 One sports publication bearing handwritten notations such as "Arizona St 11," one notebook captioned "Champion" bearing handwritten notations such as "Sabu-3720 Sept 26"

(Your item 24, Team 18)
Q73 Numerous sheets of plain white paper

(Your item 28, Team 18)
Q74 Three sheets of paper bearing handwritten notations such as "Paul 320"

(Your items 1, 4, 5, 6, 7, 8, 11, 14, Team 19)
Q75 Three slips of white paper, one sheet of plain blue paper, two sports publications captioned "The National Armstrong Daily News Review," one sheet of plain white paper, one portion of a newspaper captioned "DAILY NEWS, SATURDAY, JANUARY 1, 1972," one manila envelope containing numerous sheets of plain white paper, one sports publication captioned "SPORTS EYE"

Result of examination:

Referenced letter designated specimens Q1, Q2, Q3 and Q4 as having been obtained by Team #1. Q1 contains a sheet bearing notations in the form of calculations of the status of various accounts. Also included is a sheet on which were recorded $70.00 in wagers on football games, the dates of which were not determined.

Q2 contains various schedules for basketball and football games on which have been recorded the line or point spread. A notebook bearing notations in the form of calculations of the status of accounts was also found. The following wagers on sports and horse races were noted:

Date	Amount
12/26/71	$21,960.00
12/27/71	16,335.00
12/28/71	9,975.00
12/29/71	11,010.00
12/30/71	6,965.00
12/31/71	9,107.00
1/1/72	11,385.00
Total	$86,737.00

Q3 contains cards which bear notations for the status of weekly accounts, several of which accounts correspond to accounts in Q2 for 12/27/71. It also contains two parlay card stubs recording $1.00 each in wagers on undetermined dates

Q4 contains numbers wagers in the sum of $376.78 and $16.00 additionally in wagers on horse races.

Referenced letter designated specimens Q5 through Q11 as having been obtained by Team #3./ Q5 and Q6 contain sports publications useful to bookmakers in comparing lines and in accepting wagers on horse races. Q7 contains a blank pad of paper bearing no readable impressions of indented writing.

Q8 contains six pages, some dated "May 6" or "May 11," which bear records of the outcome of numerous crap games based on various "come bets." It cannot be determined whether actual wagering occurred or whether the notations are merely for statistical comparisons.

Q9 and Q11 are quantities of water soluble paper of the type used by bookmakers inasmuch as it rapidly dissolves when immersed in water. Such paper was used to record many of the wagers in the various specimens.

Q10 contains the following wagers on numbers and horse races:

Date	Amount
12/20/71	$1,391.65
12/21/71	522.35
12/22/71	801.75
12/23/71	1,102.00
12/24/71	966.30
12/25/71	63.45
Total	$4,850.50

Also included in Q10 are daily records of the status of the accounts of sixteen numbers and horse-racing writers or bettors during the same period of 12/20/71 through 12/25/71.

Referenced letter designated specimens Q12 through Q17 as having been obtained by Team #4. Q12 contains sports wagers of $2,445.00 dated "Sat 1/1." Q13 and Q14 contain football and basketball schedules on which has been recorded line information.

Q15 contains the following wagers on sports, horse races and numbers recorded on water soluble paper:

Date	Amount
7/5/71	$5,107.10
7/6/71	5,332.95
7/7/71	5,071.15
7/8/71	7,079.15
7/9/71	3,769.60
7/10/71	4,935.00
7/11/71	2,531.00
7/12/71	2,683.80
7/13/71	3,065.85
7/14/71	586.20
7/15/71	3,789.00
7/16/71	1,846.90
7/17/71	3,721.50
7/18/71	1,750.00
7/26/71	2,472.45
7/27/71	3,993.65
7/28/71	3,459.00
7/29/71	6,185.35
7/30/71	3,266.65
7/31/71	5,031.40
8/1/71	3,940.00
Total	$79,617.70

In addition, Q15 contains numerous sheets showing the weekly status of more than thirty accounts. Q16 and Q17 also include similar sheets. Q17 also contains a chart for determining winnings based on various odds and records of $1,047.00 in sports wagers.

Referenced letter designated specimens Q18, Q19 and Q20 as having been obtained by Team #5. Q18 contains sheets showing a running status of various accounts and two sheets bearing a handwritten basketball line, the dates for which were not determined. Also included in Q18 are over $5,000.00 in wagers on sports and horse races for 12/29/71 and over $600.00 for 12/31/71.

Q19 is a basketball schedule bearing a handwritten line thereon. Q20 shows calculations of winnings on sports action but bearing no dates.

Referenced letter designated specimens Q21 through Q24 as having been obtained by Team #6. Q21 contains pieces of paper bearing no readable notations. Q22 contains sports schedules, some of which contain line information, and "The National Armstrong Daily News Review," a publication used by bookmakers and bettors on horse races.

Q23 contains a card for calculating winnings at different odds, sheets showing line information, sheets showing the status of accounts, a running account of wagers received on football bowl games of 12/71 and 1/72, and the following wagers on sports and horse races:

Date	Amount
12/20/71	$13,054.00
12/21/71	5,701.00
12/22/71	9,523.00
12/23/71	13,007.00
12/25/71	7,774.00
12/26/71	8,700.00
12/27/71	15,023.00
12/28/71	15,979.00
12/29/71	21,351.00
12/30/71	12,528.00
12/31/71	9,840.00
Total	$132,480.00

Q24 contains three undated weekly sheets showing the status of over forty accounts and "The National Armstrong Daily News Review" for numerous dates. Also included is a wagering slip on the football bowl games in 12/71 and 1/72 and on horse races on 1/1/72 in the amount of $8,404.00.

Referenced letter designated specimens Q25 through Q31 as having been obtained by Team #7. Q25 contains sheets on which were recorded $11,294.00 in wagers on horse races and sports for 12/31/71; $2,360.00 for 1/1/72; and $14,201.00 in wagers for undetermined dates.

Q26 contains blank water soluble paper. Q27 contains calculations of wagers accepted on four football teams - Texas, Pennsylvania State, Auburn and Oakland. Q28 and Q30 contain wagers on horse races each on 12/31/71 in the sums of $16.00 and $50.00 respectively. Q29 contains a wager of $5.00 on a horse race on 12/31/71 and Q31 a wager of $25.00 on one for 12/1/71.

It was determined from printing peculiarities and characteristics that each photocopy of an original sports schedule was made from an original schedule of the same date and issue. The original issues of the sports schedules, by date and issue, were printed from the same original or related art work. The photocopy sports schedules designated Q32, Q33, Q36, Q40, Q50 and Q51 (for the date 12/19/71) were made, at least in part, with the use of the same equipment. It could not be determined whether the same photocopy equipment was used for all the photocopies or whether any one original schedule was used to make any one photocopy. This is due to a lack of significant distinguishing characteristics.

Q33, designated as having been obtained by Team #10, contains a notebook recording the following wagers on sports and horse races on successive pages:

Date	Amount
undetermined	$4,380.00
12/13/71	1,283.00
12/14/71	300.00
undetermined	320.00
12/16/71	271.00
12/17/71	539.00
12/18/71	2,544.00
12/19/71	3,470.00
undetermined	8,548.00
12/25/71	3,826.00
12/26/71	4,635.00
12/ /71	1,180.00
12/28/71	1,181.00
12/29/71	957.00
12/30/71	2,280.00
12/31/71	4,207.00
1/1/72	5,285.00
Total	$45,266.00

Referenced letter designated specimens Q34 through Q37 as having been obtained by Team #11. Q34 contains a sheet showing the status of eight accounts. Q35 contains a quantity of unused football parlay cards and stubs from parlay cards showing wagers of $917.00 dated 12/30/71.

Q36 also contains football parlay cards bearing no wagers, various football and basketball schedules bearing handwritten line information, and a sheet recording the status of twenty-one accounts. Wagers of $39,506.00 on sports and horse races during the period of 12/27/71 through 1/1/72 were noted. Q37 contains wagers of $16,172.00 for the same time period.

Referenced letter designated Q38 through Q43 as having been obtained by Team #12. Q38, Q40, Q41 and Q42 contain schedules of football and basketball games bearing line information. Q42 contains other sports and horse-racing publications in general use by bookmakers.

Q39 contains the following wagers in a notebook on sports, numbers and horse racing on successive pages:

Date	Amount
undetermined	$1,393.00
11/22/71	6.00
undetermined	1,901.00
11/25/71	82.00
undetermined	1,547.00
11/26/71	339.00
undetermined	5,896.00
12/4/71	134.00
undetermined	9,165.00
12/11/71	52.00
undetermined	13,549.00
12/23/71	94.00
12/24/71	1,071.00
12/25/71	60.00
Undetermined	8,924.00
12/31/71	869.00
undetermined	1,591.00
1/1/72	4,236.00
Total	$50,909.00

It is noted that on many of the pages listed above as "undetermined" dates, there is a handwritten notation of the day of the week.

Q42 contains wagers on horse races for 11/30/71 in the sum of $17.00. Q43 contains calculations of the status of accounts, a list of winning and losing teams and wagers of $123.00, of which $66.00 was for horse races on 11/27/71.

Referenced letter designated specimens Q44 through Q47 as having been obtained by Team #13. Q44 and Q45 contain lists of the status of various accounts. In addition, Q45 contains a schedule bearing line information and wagers on basketball games on undetermined dates in the amount of $4,595.00. Also included is a group of records of individuals and team competition on papers following a baseball record format, but containing statistics of the type which might be common to one of various games often played in taverns, such as darts.

Q46 is a bag containing numerous sheets showing the calculations for the status of accounts and undated wagers. A sum of $245.00 in football wagers was found for games to be played the weekend of 10/16/71 and $3,125.00 for the weekend of 10/9/71. A total of $88,701.00 in wagers was found, the dates of which could not be established. Q47 contains sheets of blank paper.

Referenced letter designated specimens Q48 through Q54 as having been obtained by Team #13. Q50 contains wagers on sports and horse racing in the following amounts on successive pages of the notebook:

Date	Amount
weekend of 11/13/71	$1,390.00
weekend of 11/20/71	2,825.00
weekend of 11/20/71	2,575.00
weekend of 11/27/71	3,925.00
weekend of 12/4/71	5,180.00
partially for 12/7/71	1,950.00
12/8/71 and 12/11/71	2,400.00
12/9/71	6,000.00
12/9/71	3,660.00
weekend of 12/11/71	4,010.00
weekend of 12/11/71	1,040.00
paritally for 12/20/71	5,385.00
undetermined	2,880.00
undetermined	4,130.00
undetermined	3,305.00
football bowl games	770.00
football bowl games	450.00
Total	$50,980.00

Q53 contains sports wagers of $150.00 for undetermined dates. Q54 contains two cards bearing undated sports wagers of $5,000.00 and $4,350.00 respectively.

Various sports publications used by bookmakers were found in Q48, Q49 and Q52. Schedules bearing sports line information for numerous dates were found in Q48, Q50 and Q51. Calculations in the form of status-of-accounts sheets and amounts wagered on different contests were found in Q48 and Q53.

Q48 also contains a yellow pad, the first page of which bears impressions of indented writing of professional football wagers of undetermined dates. The name "Mike" is written at the top. At least $155.00 in wagers can be identified.

Referenced letter designated specimens Q55 through Q62 as having been obtained by Team #16. Q55 contains wagers on football bowl games for the 1971 season of $9,050.00. Q59 contains wagers on bowl games of $3,280.00.

Q60 contains a sheet bearing sports wagers of $1,200.00 on contests during the last two weeks of December, 1971. Another sheet labeled "Thurs Dec 30" and "Fri" bears wagers on numbers, sports and horse races of $2,365.95. On the back, labeled "Fri," are wagers on sports and numbers of $6,837.00. Another sheet bears wagers on sports and horse races of $1,980.00.

Q61 contains sheets on which are recorded wagers of $25,000.00 on the 1971 season bowl games. In addition, the following sheets, bearing dates as indicated, were found with wagers on sports, numbers and horse races:

Date	Amount
"Mon 12/27"	$ 4,585.00
12/27/71	13,470.00
12/28/71 and 12/29/71	643.00
"Tues 12/28"	17,080.00
12/29/71	22,505.00
"Thurs"	11,330.00
Total	$69,613.00

Sheets showing the status of accounts were found in Q55, Q56, Q61 and Q62. Various publications concerning sports and horse racing were found in Q56, Q57, Q59 and Q60.

Q58 contains blank water soluble paper of the type used in many of the exhibits to record wagers and calculate the status of accounts. Q59 contains a schedule bearing line information. Q56 contains a quantity of torn paper, which bears line information and calculations of the status of accounts. Q62 contains a sheet tabulating the wagers made on both teams in the Cotton Bowl game played on 1/1/72.

Referenced letter designated specimens Q63 through Q67 as having been obtained by Team #17. Q64 contains a sports publication used by bookmakers. Q65 contains a large quantity of water soluble paper similar to that found in other specimens. Q67 contains basketball schedules, some bearing line information, and a quantity of water soluble paper.

Q63 consists of a small tool kit enclosed in a plastic case with 3 slot screwdrivers, 2 Phillips screwdrivers, 2 awls, one corkscrew-type tool, and a torque amplifier; an ammeter enclosed in a black plastic case with an extra hole in the back of the case that has two potentiometers across the meter movement adjustable for a full scale reading of 10 milliamps; and another ammeter enclosed in a black plastic case with two potentiometers across the meter movement adjustable for a full scale reading of 100 milliamps.

Q66 consists of a white 500-type dial telephone attached to a 42A connecting block. Also attached to the 42A block is a short piece of four-conductor telephone wire and a gray two-conductor wire attached to a black ammeter. This meter is wired in series with the red lead to the telephone and has two potentiometers across the meter movement adjustable for a full scale reading of 100 milliamps.

Referenced letter designated specimens Q68 through Q74 as having been obtained by Team #18. Specimens Q68, Q69, Q70, Q72 and Q74 contain calculations of the status of accounts. Q69 and Q74 contains sheets tabulating amounts bet on certain games. Line information was found in Q69, Q72 and Q74. Parlay card stubs bearing no wagers were found in Q71. Q73 contains a quantity of blank water soluble paper, similar to that found in other specimens.

Referenced letter designated specimen Q75 as having been obtained by Team #19. It includes blank water soluble paper, "The National Armstrong Daily News Review," horse-racing charts and news clipped from a newspaper and the publication "Sports Eye." These publications are in general use by bookmakers in handling wagers on horse races and sports events.

It is noted that the persons who recorded the wagers, particularly sports wagers, used the letter "T" to mean "times $5.00." Thus a wager of "6T" would be a wager of $30.00 (6 times $5.00). It is also noted that some of the wagers on sports events were "over" or "under," i.e. a wager that the total score of the game will be [illegible] over or under the line given for the game as a total score.

The submitted material will be returned separately.

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MAR 6 1973
NEW HAVEN

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
1973
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. H-298

WILLIAM R. BALOG, et al. :

and

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. H-299

ROGER L. SPINELLI, et al. :

RULINGS ON DEFENDANTS' PRETRIAL MOTIONS

The 26 defendants in the above-entitled two cases have been indicted for gambling offenses in violation of 18 U.S.C. §§ 1955 and 2. Because most of the defendants have filed similar pretrial motions, counsel have agreed that the Court may rule on the motions in a single memorandum order.

I. Defendants' Motions for Discovery and Inspection

A) In Criminal No. H-298, all of the defendants, except Riccio, have submitted motions for discovery and inspection.

Only paragraphs 15 and 18 of the motions filed by Balog, Messina, Richard Lanese, and Nicholas Lanese require rulings. Both requests are denied. See United States v. Romanello, Crim. No. H-203 (D. Conn. May 25, 1972).

The government has agreed to comply with paragraphs 1-20, 22-25, and 27-33 of the motions submitted by Mastro, Gordon, and Levin. Paragraph 21 is denied; paragraph 26 is premature and, therefore, denied.

With respect to the defendant Hardy the government will comply with paragraphs 1, 2, 4, and 5; paragraphs 3, 6, and 7 are denied.

The requests of the defendant Suglia in paragraphs 3, 5, 8, 9, and 10 are granted by agreement; paragraphs 1, 2, 4, 6, and 7 are denied. The government, of course, remains under a continuing duty to comply with the principles enunciated in Brady v. Maryland, 373 U.S. 83 (1963).

b) In Criminal No. H-299, similar motions were filed on behalf of ten of the defendants. The requests of Michael Piazza and Anne Piazza are granted, absent objection. Paragraphs 1-20, 22-25, and 27-28 of the motions submitted by the defendants Spinelli, Moretti (father and son), Varvella, Robalicy, Colangelo, and Stoll are to be complied with by the government. Paragraphs 21 and 26 are denied.

Spinelli's additional requests, set forth in paragraphs 14A-L are granted with the limitations expressed in open court by government counsel.

The defendants Spinelli's and Stoll's requests set forth in paragraphs 29-32 are granted; paragraphs 33-38 are denied.

The defendant Woznick's motion for production is granted.

II. Defendants' Motions for Bills of Particulars

A) In Criminal No H-298, eight motions for Bills of Particulars were filed by all the defendants, except Riccio and Suglia.

With respect to the requests by the defendants Balog, Richard Lanese, Michael Lanese, and Nicholas Messina, paragraph 1 is granted; paragraphs 2-6 are denied, except that the government has agreed to specify the date, time, and place of the offenses asked for in paragraph 4.

Concerning the Levin, Gordon, and Mastro motions, paragraphs 1, 2, 4, 6, and 8 are granted absent objection; paragraphs 3 and 7 are also granted to the extent the government is able at this time to specify the degree of each defendant's involvement; paragraph 5 is denied.

Paragraphs 1-7 of Hardy's motion are denied; paragraphs 8 and 9 are granted; paragraph 10 is denied.

B) In Criminal No. H-299, ten motions for Bills of Particulars were submitted.

With respect to the defendants' Spinelli, Woznick and Stoll: paragraphs 1 and 2 are granted to the extent agreed upon by the government in oral argument; paragraphs 3-6 are denied; paragraph 7 is granted to the extent allowed in Crim. No. H-298; paragraph 8 is granted by agreement; paragraph 8(b) is denied as to names and addresses.

The information sought by the defendants Michael Piazza, Dana Piazza, Moretti (father and son), Varvella,

Roballey, and Colangelo in paragraphs 1-4 are granted to the extent agreed upon by the government in oral argument. Paragraphs 5-9 have been complied with by the government.

III. Miscellaneous Motions

The motions to inspect grand jury minutes are denied; motions for extension of time are granted, absent objection.

All other motions may go off without prejudice.

The Court is appreciative of counsel's cooperation and efforts in the aforementioned matters.

Dated at New Haven, Connecticut, this 6th day of March, 1973.

Robert C. Zampano
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. H-298
	)	
WILLIAM R. BALOG, ET AL	)	

FILED
JUN 27 10 19 AM '73
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U.S. DISTRICT COURT
BRIDGEPORT, CONN.

MOTION FOR A STAY OF PROCEEDINGS

Now comes the United States of America, by and through its attorney, John R. Tarrant, Special Attorney, United States Department of Justice, and the undersigned counsel for the defendants William R. Balog, Nicholas V. Lanese, Daniel Levin, Richard M. Lanese, Charles S. Suglia, Louis Mastro, Nicholas Messina and Walter T. Hardy and hereby jointly move for a stay of the proceedings in the case of United States v. William R. Balog, et al, Criminal No. H-298, for the following reasons:

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JUN 28 1973
NEW HAVEN

6/28/73 Granted. RC Zampano

1. The above-entitled case involves both substantive and procedural issues concerning the utilization of court authorized electronic surveillance;

2. These issues are comparable to those raised in United States v. Giordano, (C.A. 4), 469 F.2d 522, cert. granted March 26, 1973; United States v. Chavez, (C.A. 9), cert. granted May 21, 1973; United States v. Kahn, (C.A. 7), cert. granted 72-1328; Cafero v. United States, (C.A. 3), petition for cert. filed March 26, 1973; and Whittaker v. United States, (C.A. 3), petition for cert. filed March 29, 1973;

3. Since the motions now pending before this Honorable Court mainly concern both substantive and procedural issues currently pending before the Supreme Court of the United States, it would appear that the interest of this Court and of the parties involved are served best by a stay of the proceedings pending the resolution of those issues by the United States Supreme Court.

WHEREFORE, the undersigned respectfully move for a stay of proceedings in the above-entitled case pending resolution in the Supreme

Court of the United States of Giordano v. United States, (C.A. 4, 1973), 469 F.2d 522, and the matters thereto related.

JOHN R. TARRANT
Special Attorney
U. S. Department of Justice

WILLIAM R. BALOG, NICHOLAS V. LANESE, RICHARD M. LANESE and NICHOLAS MESSINA

By: RICHARD T. MEEHAN, ESQUIRE
Their Attorney

DANIEL LEVIN and LOUIS MASTRO

By: CHARLES HANKIN, ESQUIRE
Their Attorney

CHARLES S. SUGLIA

By: JACOB D. ZELDES, ESQUIRE
His Attorney

WALTER T. HARDY

By: ROBERT J. MICHAEL, ESQUIRE
His Attorney

FILED
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U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
V.	)	CRIMINAL NUMBER H-298
	)	
WILLIAM R. BALOG, ET AL	)	

NOTICE OF READINESS

Please be advised t at the government is ready for trial in the above-captioned case.

Respectfully submitted,

STEWART H. JONES
United States Attorney

May 23, 1974

BY: JOHN R. TARRANT
Special Attorney
United States Department of Justice

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MICROFILM
DEC 13 1974
NEW HAVEN

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. H-298
	:	
WILLIAM R. BALOG,	:	
NICHOLAS V. LANESE,	:	
DANIEL LEVIN,	:	
RICHARD M. LANESE,	:	
CHARLES S. SUGLIA,	:	
LOUIS MASTRO,	:	
NICHOLAS MESSINA and	:	
WALTER T. HARDY	:	

O R D E R

The order of June 28, 1973 staying the proceedings in the above-captioned case is hereby vacated.

Dated at New Haven, Connecticut, this 11th day of December, 1974.

Robert C. Zampano
United States District Judge

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MICROFILM
MAR 16 1976
BRIDGEPORT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-298
WILLIAM R. BALOG et. al.	:	

MOTION TO COMPEL VOICE EXEMPLARS

Now comes the United States of America, by and through its attorney, Peter R. Casey, III, Special Attorney, United States Department of Justice, and moves this Honorable Court for an order compelling the defendants William R. Balog, Nicholas V. Lanese, Richard M. Lanese, Nicholas Messina, Daniel Levin, Louis Mastro, Charles S. Suglia, and Walter T. Harty, to appear in the office of the United States Attorney with counsel to furnish voice exemplars. If this motion is granted, the Government will ask the defendants to read a paragraph relating to the Declaration of Independence and will record said readings in order to make a comparison of the voices.

Respectfully submitted,

PETER C. DORSEY
United States Attorney

BY: Peter R. Casey III

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

3/15/76
For reasons stated on open court the motion is granted. PC Dorsey Esq.

FILED
MAR 15 4 06 PM '76
U.S. DISTRICT COURT
NEW HAVEN, CONN.

CERTIFICATION

This is to certify that copies of the foregoing Motion have been mailed, postage prepaid, to all counsel of record this 7th day of January, 1975 at Hartford, Connecticut.

Peter R. Casey III

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-298
WILLIAM R. BALOG, et. al.	:	
and		
UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-299
ROGER L. SPINELLI, et. al.	:	

MEMORANDUM OF THE UNITED STATES IN SUPPORT OF MOTION TO COMPEL VOICE EXEMPLARS

This request is analogous to a request to take fingerprints or to have a defendant submit to a line-up. It is simply a request for the defendants to display a physical characteristic, to wit, their voices.

I. THE COURT HAS THE POWER TO ORDER A DEFENDANT TO PROVIDE VOICE EXEMPLARS TO THE GOVERNMENT FOR USE SOLELY AS AN IDENTIFYING PHYSICAL CHARACTERISTIC

The Court has the inherent power to order the inspection of physical characteristics of a defendant. United States v. Bender 331 F Supp. 1074 (C.D.Cal. 1971). The Bender Court held that the Federal Rules of Criminal Procedure do not entirely supplant the fundamental authority which the Courts exercised prior to the promulgation of the rules. This being the case, the Court found that it was free to permit discovery where Rule 16 of the Federal Rules of Criminal Procedure did not express a policy to discourage discovery not explicitly authorized by the Rule. Supra, at 1076, citing United States v. Taylor, 25 F.R.D. 225 (E. D.N.Y. 1960). Additionally, it should be noted that Rule 57(b) recognizes this inherent power by providing that:

> "If no procedure is specifically prescribed by rule, the Court may proceed in any lawful manner not inconsistent with these rules or with any applicable statute". Federal Rules of Criminal Procedure, 57(b).

II. AN ORDER COMPELLING VOICE EXEMPLARS DOES NOT DENY A DEFENDANT HIS RIGHTS UNDER EITHER THE FOURTH OR FIFTH AMENDMENT

The most recent decisions of the United States Supreme Court, concerning the compulsory production of voice and handwriting exemplars, are found in United States v. Dionisio, 410 U.S. 1 (1973)(voice exemplars) and United States v. Mara, 410 U.S. 19 (1973)(handwriting exemplars). Essentially, these cases stand for the proposition that a grand jury witness cannot interpose his Fifth Amendment privilege against an order compelling him to produce voice or handwriting exemplars. The Court stated:

> "It has long been held that the compelled display of identifiable physical characteristics infringes no interest protected by the privilege against compulsory self-incrimination". United States v. Dionisio, supra, at 5-6.

Similarly, in Dionisio, the Supreme Court found no reasonable expectation of privacy meriting Fourth Amendment protection. Mr. Justice Stewart, in speaking for the Court, stated:

> "The physical characteristics of a person's voice, its tone and manner, as opposed to the content of a specific conversation, are constantly exposed to the public. Like a man's facial characteristics, or handwriting, his voice is repeatedly produced for others to hear. No person can have a reasonable expectation that others will not know the sound of his voice, any more than he can reasonably expect that his face will be a mystery to the world." United States v. Dionisio, supra, at 14; see also, Katz v. United States, 389 U.S. 347 (1967); United States v. Doe (Schwartz), 457 F.2d 895 (2d Cir. 1972).

Since the production of voice exemplars did not infringe upon any interest protected by the Fourth Amendment, the Court also held that there was no necessity for a preliminary showing of "reasonableness". United States v. Dionisio, supra, at 15.

III. THE COURT MAY ORDER VOICE EXEMPLARS DURING THE POST-INDICTMENT STAGE OF PROCEEDINGS

Courts have regularly issued orders compelling handwriting exemplars of defendants at the post-indictment stage of a case. See, e.g., United States v. Rothman, 463 F.2d 488, 490 (2d Cir. 1972); United States v. Rogers, 329 F.Supp. 327 (E.D.Wisc. 1971); United States v. Vignera, 307 F.Supp. 136 (S.D.N.Y. 1967). In United States v. Wade, 388 U.S. 218 (1967), the Supreme Court found no harm in compelling a defendant accused of bank robbery to utter words, that had allegedly been spoken by the robber, at a post-indictment line-up. The Court stated that:

> ". . . compelling Wade to speak within hearing distance of the witness, even to utter words purportedly uttered by the robber, was not compulsion to utter statements of a 'testimonial' nature; he was required to use his voice as an identifying physical characteristic, not to speak his guilt." United States v. Wade supra, at 222-223.

Courts have also had frequent occasion to call upon defendants to display physical characteristics during trial. See, e.g., United States v. Jones, 443 F.2d 1077 (4th Cir. 1971)(defendant compelled to repeat words spoken by robber so that witness could make voice identification); United States v. King, 433 F.2d 937, 938 (9th Cir. 1970)(defendant required to don, at trial, certain distinctive clothing used in a robbery); Mikers v. United States, 433 F.2d 719, 726 (2d Cir. 1970)(Connecticut case in which defendant was required, at trial, to stand up for purposes of identification and comparison). As a result, it is our belief that requiring the defendants in these cases (H-298, H-299) to submit to voice exemplars would not offend any constitutional privilege and is clearly within the power of the Court.

CONCLUSION

Based on the above-mentioned arguments and authorities, the United States respectfully requests this Court to order the defendants in Criminal Cases H-298 and H-299 to appear in a mutually convenient

Government office and furnish voice exemplars.

Respectfully submitted,

PETER C. DORSEY
United States Attorney

BY: Peter R. Casey

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

C E R T I F I C A T I O N

This is to certify that copies of the foregoing Memorandum have been mailed, postage prepaid, to all counsel of record in both Criminal Nos. H-298 and H-299 this 7th day of January, 1975 at Hartford, Connecticut.

Peter R. Casey

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

FILED
Jul 15 8 24 AM '75
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
VS	:	CRIMINAL NO. H-298
WILLIAM R. BALOG, ET AL	:	
UNITED STATES OF AMERICA	:	
VS	:	CRIMINAL NO. H-299
ROGER L. SPINELLI, ET AL	:	

CONSOLIDATED MOTION ON BEHALF OF THE UNDERSIGNED DEFENDANTS TO DISMISS THE INDICTMENTS BECAUSE DEFENDANTS HAVE BEEN DENIED SPEEDY TRIAL

1. The indictments in United States of America v. William R. Balog, et al., Criminal No. H-298 and United States of America v. Roger L. Spinelli, et al., Criminal No. H-299 were returned on June 27, 1972.

2. On June 8, 1973 this Court granted the Government's Motion for a Stay of Proceedings which requested:

> "WHEREFORE, the undersigned respectfully move for a stay of proceedings in the above-entitled case pending resolution in the Supreme Court of the United States of Giordano v. United States, (C.A. 4, 1973), 469 F.2d 522, and the matters thereto related."

3. In accordance with this Court's order granting the Government's motion, the stay of proceedings was terminated on May 13, 1974 when the Supreme Court decided the cases of United States v. Giordano, ___U.S.___, 40 L.Ed.2d 341 (1974),

and United States v. Chavez, ___U.S.___, 40 L.Ed.2d 380 (1974), which date was set forth in the Government's Motion for a Stay of Proceedings.

4. The Government acknowledged that the stay of proceedings was terminated on May 13, 1974 by letter to this Court dated October 18, 1974, a copy of which is annexed hereto as Exhibit A.

5. More than eight months have elapsed since the stay of proceedings was terminated, which period constitutes unreasonable delay and has deprived defendants of their right to speedy trial.

WHEREFORE, pursuant to the Fifth and Sixth Amendments to the Constitution of the United States and Rule 4 of the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases, defendants move to dismiss the indictments.

Dated at Bridgeport, Connecticut this day of , 1975.

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United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT
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HARTFORD, CONNECTICUT 06103

October 18, 1974

FILED
JUL 17 10 58 AM '75
CLERK
U S DISTRICT COURT
BRIDGEPORT, CONN.

Honorable Robert C. Zampano
United States District Court Judge
Post Office Building
141 Church Street
New Haven, Connecticut 06510

Re: United States v. Spinelli
Criminal No. H-299
United States v. Balog
Criminal No. H-298

Dear Judge Zampano:

The Spinelli (H-299) and Balog (H-298) cases have been held in abeyance pending the decisions in Giordano and Chavez. The Supreme Court has ruled, and we feel that the cases, based on the facts, fall under the Chavez decision. On this basis, we feel that the cases should now go forward. In order to expedite matters, we would request that a conference be scheduled between all the parties in the hope that any remaining questions or problem areas can be resolved.

Respectfully yours,

Peter R. Casey, III

PETER R. CASEY, III
Special Attorney
U. S. Department of Justice

PRC:ejz

cc: Richard T. Meehan, Esq.
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263

EXHIBIT A.

BEST COPY AVAILABLE

FILED

AUG 4 4 46 PM '75

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
V.	)	CRIMINAL NO. H-298
	)	
WILLIAM R. BALOG ET. AL.	)	

UNITED STATES OF AMERICA	)	
	)	
V.	)	CRIMINAL NO. H-299
	)	
ROGER L. SPINELLI ET. AL.	)	

GOVERNMENT'S ANSWER TO CONSOLIDATED MOTION ON BEHALF OF ALL DEFENDANTS TO DISMISS THE INDICTMENTS BECAUSE DEFENDANTS HAVE BEEN DENIED SPEEDY TRIAL

On June 27, 1972, the indictments in United States v. William R. Balog, et. al., Criminal No. H-298 and United States v. Roger L. Spinelli, et. al., Criminal No. H-299 were returned by the grand jury. All defendants were arrested on June 29, 1972. Thereafter numerous motions were filed and amended by the individual defendants. These motions included Discovery and Inspection, Bill of Particulars, Inspection of Grand Jury Minutes, Motion for Extension of Time to File Additional Motions, Motion to Suppress Seized Property and Intercepted Communications, and Motion to Dismiss Indictment.

On June 28, 1973, this Court granted a Motion For Stay of Proceedings in United States v. Balog, et. al., Criminal No. H-298 "pending resolution in the Supreme Court of the United States of Giordano v. United States, (C.A. 4, 1973), 469 F.2d 522, and the matters thereto related". At the time this stay was granted there were still pending Motions to Suppress and Dismiss Indictment filed

August 15, 1972.

On November 12, 1973, this Court granted a Motion For Stay of Proceedings in United States v. Spinelli, et. al., Criminal No. H-299, pending resolution of Giordano and related cases by the Supreme Court. At the time this stay was granted there were still pending Motion to Suppress filed August 8, 1973, and Motion to Dismiss filed August 14, 1972.

On May 13, 1974, the Supreme Court rendered its decision in United States v. Giordano 945 S. Ct. 1820 (1974), and United States v. Chavez, 94 S. Ct. 1849, 1858 (1974).

On May 28, 1974, the government filed a Notice of Readiness to notify the Court that the cases were ready to go forward.

On October 18, 1974, the government again notified the Court that the cases were ready to go forward.

The Second Circuit Rules Regarding Prompt Disposition of Criminal Cases, [hereinafter the Second Circuit Rules] were promulgated on January 5, 1971, and amended on May 24, 1971. They were superceded by the Plan for the United States District Court for the District of Connecticut for Achieving Prompt Disposition of Criminal Cases [hereinafter the Plan], which was approved February 28, 1973, and which became effective April 1, 1973. Inasmuch as the filing of the indictments and the arrests in Criminal No. H-298 and Criminal No. H-299 occurred prior to the effective date of the Plan, it would appear that the government's conduct must be judged in accordance with the Second Circuit Rules.

Under the provisions of Rule 4 of the Second Circuit Rules, if the government fails to comply with the six-month notification

requirement, the Court must, upon motion by the defendant, dismiss the indictment, unless sufficient time may be excluded under the provisions of Rule 5 of the Second Circuit Rules.

For the purpose of determining the time frame within which the government must comply with the Rule 4 notification requirement, the history of these proceedings should be broken down into three periods. First, the period of time between the arrest of the defendants and the granting of the Stay of Proceedings. Second, the period of time the Stay of Proceedings was operative. Third, the period of time between the termination of the Stay of Proceedings and the filing of the Rule 4 notice of readiness.

From a reading of the defendants' consolidated motion it appears that there is no claim that the six-month notification period expired prior to the granting of the stay or prior to the decision in the Giordano case. Thus we assume that the defendants do not claim that the notification period expired prior to May 13, 1974. Nevertheless, it may be important to decide how much time between the arrests and the Giordano decision is chargeable to the government under Rule 4 or, conversely, how much of that time is excluded under Rule 5.

The government's position is that the entire period of time between the filing of the initial pre-trial motions (July 18, 1972, in Criminal No. H-299 and August 8, 1972 in Criminal No. H-298) and the decision in Giordano (May 13, 1974) should be excluded. Thus under Rule 4 the government would be charged with six weeks in Criminal No. H-298 and three weeks in Criminal No. H-299. Then, assuming for the sake of this motion that the Supreme Court decision handed down May 13, 1974 operated to automatically terminate the stay, the two week period between the Giordano decision and the government's notifying the Court

of its readiness was not violative of Rule 4 or unreasonable.

WHEREFORE, the government respectfully moves that Defendants' Motion that they have been Denied a Speedy Trial be dismissed.

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

BY

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

C E R T I F I C A T I O N

This is to certify that copies of the foregoing Answer have been mailed, postage prepaid, this 4th day of August, 1974 at Hartford, Connecticut to:

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Special Attorney
U.S. Department of Justice

FILED
MAY 20 8 52 AM '74
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)
)
V.) CRIMINAL NUMBER H-298
)
WILLIAM R. BALOG, ET AL)

NOTICE OF READINESS

Please be advised that the government is ready for trial in the above-captioned case.

Respectfully submitted,

STEWART H. JONES
United States Attorney

May 23, 1974

BY: JOHN R. TARRANT
Special Attorney
United States Department of Justice

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
V.	)	CRIMINAL NUMBER [illegible]299
	)	
JOSEPH L. SPINELLI, ET AL	)	

NOTICE OF READINESS

Please be advised that the government is ready for trial in the above-captioned case.

Respectfully submitted,

STEWART H. JONES
United States Attorney

May 23, 1974 BY: /s/ JOHN R. TARRANT
Special Attorney
United States Department of Justice

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

VS : CRIMINAL NO. H-298

WILLIAM R. BALOG, ET AL :

AND

UNITED STATES OF AMERICA :

VS : CRIMINAL NO. H-29

ROGER L. SPINELLI, ET AL :

FILED
OCT 20 10 58 AM '75
U.S. DISTRICT COURT
NEW HAVEN, CONN.

BRIEF IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS AND IN OPPOSITION
TO GOVERNMENT'S MOTION FOR VOICE EXEMPLARS

On October 20, 1975 the Court heard argument on defendant's consolidated motion to dismiss the above-captioned indictments and also on the Government's motion to compel voice exemplars from the defendants. Annexed hereto are copies of various rulings by the Court relevant to the Motion to Dismiss and a copy of the Court docket sheet on the above-captioned criminal files.

I. MOTION TO DISMISS

Relief is sought pursuant to Rule 4 of the Second Circuit Rules regarding prompt disposition of criminal cases (hereinafter Second Circuit Rules). It is the defendants' contention, simply, that despite any claim by the Government that a notice of readiness had been filed, at the time of that filing and continuing until the present, the Government is in fact not ready for trial. The mere filing of a notice of readiness does not

foreclose inquiry by the Court as to whether in fact the Government was ready to proceed to trial within six months of the date of arrest. United States v. Pollack, 474 F.2d 828, 830 (2d Cir. 1973).

The following are the relevant dates pertaining to docket No. H-298:

June 29, 1972	Defendants arrested
July 24, 1972	Pleas of not guilty entered by Suglia, Hardy, Balog, Nicholas Lanese, Levin, Gordon, Richard Lanese, Mastro and Messina, and Motions ordered to be filed by August 14, 1972.
August 7, 1972	Motion by Defendant Suglia for Discovery and Inspection filed
August 14, 1972	Motions filed by Defendant Hardy
August 15, 1972	Motions filed by defendants Messina, Balog. R. Lanese and N. Lanese, Gordon, Levin, Mastro.

As of August, 1972 the time to be computed against the six month period would run from the date of arrest until the date that motions were filed by each defendant. Thus, for defendant Suglia, there is a period of 39 days and for the other defendants under this docket number a period of 47 days.

October 24, 1972	Hearings held on all pending pre-trial motions, motions for Bill of Particulars, Discovery argued and decision reserved. Motions to Suppress and return evidence and to suppress evidence relating to interception of wire and all communications, to dismiss indictment, and for extensions of time to file additional motions marked off without prejudice.

March 6, 1973 — Rulings on defendants' pre-trial motions. At that time all other motions marked off without prejudice. (A copy of that ruling is attached hereto).

The question now arises whether the Court's reservation of decision on October 24, 1972 with regard to the pending motions that were not marked off without prejudice to renew is to be construed to mean that those motions upon which decision was reserved were no longer pending, as that phrase is used in Rule 5 of the Second Circuit Rules when computing the period in which the Government need not file that notice of readiness. A specific finding is requested as to this issue. No other motions were filed until June 27, 1973 when the defendants jointly with the Government requested a stay of the proceedings pending the resolution of certain cases before the United States Supreme Court.

If the Court finds that no motions were "pending" as in the meaning of Rule 5 as of October 24, 1972 the further period to be computed against the Government would run from that date until June 27, 1973. As to all defendants, that would be a further period of 246 days, clearly beyond the 180 day period allowed to the Government. If the Court finds instead that the reservation of decision on those motions rendered those motions, in fact, "pending" then the additional period of time to be computed against the Government would run from March 6, 1973, the date when decision was rendered on all pending motions, to June 27, 1973, a period of 113 days. This would

mean a total of 150 days for defendant Suglia and 158 days for all other defendants.

On May 13, 1974 the U.S. Supreme Court decided the Giordano and Chavez cases. By the language of the request for stay of proceedings filed on June 27, 1973 the stay was to expire upon the resolution of Giordano and Chavez. The U.S. Supreme Court decision on those cases was handed down on May 13, 1974. The Government's notice of readiness is alleged to have been filed on May 28, 1974. Provided that this notice was an effective notice of readiness this would mean an additional 15 day period to be computed against the Government. Thus for defendant Suglia the total pre-notice time was 165 days. For all other defendants the pre-notice time was 173 days.

In its preliminary brief the Government contends that on June 28, 1973 there were pending motions to suppress and dismiss the indictment that were filed on August 15, 1972 pertaining to Criminal No. H-298. An examination of the docket sheet H-298 shows that this was not in fact correct and the Court is requested to make a finding as to this issue. The Government further contends that on October 18, 1974 it again notified the Court that the cases were ready to go forward. A copy of the Government's letter was appended to defendant's consolidated motion. It is to be noted that no reference is made in this letter from Peter Casey that any notice of readiness had in fact been filed. Nor is there a request that the matter be set down for trial or considered for trial but rather it is requested that a

conference be scheduled to resolve any "remaining questions or problem area." Although the cases from the Second Circuit Court of Appeals have never specifically required that a notice of readiness be transmitted directly to the Court by the U.S. Attorney's Office, allowing instead that a filing with the Court Clerk is sufficient, the cases have stated that "under Rule 4 the Government must communicate its readiness for trial to the Court in some fashion within the six month period, as extended pursuant to Rule 5." United States v. Pierro, 478 F.2d 386, 389 (2 Cir. 1973) (emphasis added). The Court is asked to make a finding with regard to whether prior to October 18, 1974 it received any indication from the Government that it was in fact ready for trial. If the Court did not receive any indication as to this fact then the notice filed on May 28, 1974 does not satisfy the Government's burden under Rule 4. Thus the additional period to be computed against the Government running from May 13, 1974 would extend until October 18, 1974, and as to all defendants under this docket number, Rule 4 would clearly not have been complied with. It should be further noted that on two occasions the Government saw fit to communicate with the Court directly by letter, requesting that action be taken on these cases. The dates of those correspondence are October 18, 1974 and September 22, 1975. Copies of both those letters are appended hereto.

The relevant dates as to docket No. H-299 [illegible] as follows:

June 29, 1972	Defendants arrested
July 18, 1972	Pre-trial motions for defendant Dana Piazza filed; pre-trial motions of defendant Michael Piazza file
August 8, 1972	Pre-trial motions defendant Spinelli filed.
August 14, 1972	Vavella pre-trial motions filed; Edward Stoll motions filed.
August 25, 1972	Defendant Roballey's motions filed
September 21, 1972	Defendant Woznick's motions filed
September 22, 1972	Defendant Colangelo's motions filed
September 25, 1972	Hearing held on defendants' motions for bill of particulars, discovery and inspection; decision reserved. All other motions deferred until after Government's compliance with discovery motion.
October 11, 1972	Amendment to Spinelli motions filed
October 12, 1972	Edward Stoll's motion to dismissed filed
October 16, 1972	Colangelo's motions filed.
October 18, 1972	Amendments to Michael Piazza's motions filed; amendments to Dan Piazza's motions filed.

October 24, 1972	Hearing on all motions, decision reserved on motions for discovery and bill of particulars all other motions off without prejudice.
October 24, 1972	Motions of defendants Maretti, Sr. and Maretti, Jr., Spinelli filed
November 29, 1972	Defendant Vavella's motion to suppress No. 2 filed
March 6, 1973	Ruling on all pre-trial motions, those not ruled upon marked off without prejudice. See court's ruling attached hereto.
June 29, 1973	Motion by Spinelli for discovery and inspection and leave to take that position filed.
July 23, 1973	Hearing on Spinelli motions
August 30, 1973	Government's motion for discovery and inspection filed.
October 23, 1973	Hearing on Government's motion, marked over to next criminal calendar.
November 12, 1973	Above motions marked off without prejudice for reasons stated in open court; stay of proceedings granted by agreement for reasons stated in open court; Zampano, J.
November 21, 1973	M. Piazza brief in support of motion to suppress filed.
May 16, 1974	Defendant Delucia motion to dismiss filed.
May 28, 1974	Notice of readiness filed

December 9, 1974	Motion of defendant P. Contee to dismiss filed together with memorandum
January 8, 1975	Government's motion to compel voice exemplars filed
January 20, 1975	Order vacating stay of proceedings filed
March 10, 1975	Hearing on P. Contee motion to dismiss; decision reserved.
March 19, 1975	P. Contee, M. Contee motions to dismiss denied.
July 10, 1975	Instant consolidated motion on behalf of undersigned defendants filed.

It is contended that the period to run against the Government under Rule 4 must be computed as to each defendant individually, must start from the date of arrest, to the date of filing of pre-trial motions, then from the date of decision upon those motions until the time of the mutually requested stay of proceedings, then from the date that the Giordano case was decided (May 13, 1974), until the filing of the purported notice of readiness on May 28, 1974. The Court's decision on March 6, 1973 marking off all pending pre-trial motions that were not there and decided applies to all defendants under this docket number as it did to all defendants under docket No. H-298. Subsequent to that time and during the period prior to and after the stay had been ordered several defendants had filed motions. The filing of these motions should only run against the defendants

named thereon and should not toll the rule for time period for the Government as to all defendants on this docket number and on H-298.

The next issue to resolve is whether the Government was in fact ready for trial on May 28, 1974 when the notice of readiness was filed. Relevant to determination of this issue is the effect that the Court will give to the Government's filing of a motion for voice exemplars from all defendants. The crucial question is the effect of these voice exemplars or the lack thereof upon the Government's case. If the voice exemplars are in fact crucial to the Government's case then its filing of the motion to compel these exemplars is clearly an indication that it is not ready for trial nor was it ready on May 28, 1974. A further indicia of the lack of readiness is the period of time that expired between May 28, 1974 and the date of the filing of the motion for voice exemplars. The Court is requested to make a finding as to the relation of the voice exemplars to the Government's case and the effect of that motion upon the Government's notice of readiness.

In Part II of this brief the argument is developed that the motion by the Government constitutes a faulty attempt at discovery. If in fact this motion can be qualified as discovery by the Government, the Court is asked to consider the following cases: United States v. Pollack, 474 F.2d 828 (2d Cir. 1973); United States v. Strayhorn, 471 F. 2d 661, 667 (2d Cir. 1972); United States v. Gonzalez, 389 F. Supp. 471, 475 (E.D. N.Y. 1975). Each of those cases dealt with the issue of whether the Government had fully complied with defendant's discovery within the six month period. In the Pollack case

the case was remanded to the district court for additional findings and one of the issues to have been developed on remand was a claim that the Government had not complied with a discovery order and thus was not in fact ready for trial. In Gonzalez, citing the Honeycutt case, the Court said ". . . the six month rule was satisfied, as here, even when the completion of the discovery follows the filing of a notice of readiness, as long as discovery has been completed within the six month period." 389 F. Supp. 471, 475. Certainly if the Government's failure to comply with defendant's request for discovery can indicate a lack of preparedness for trial, a more compelling indication is the Government's own request for further discovery, as in the case here with the voice exemplars. The Court is requested to find whether the Government was in fact ready for trial on May 28, 1974. If the Court finds that the Government was not in fact ready on that date, Rule 4 has clearly been violated and the above-captioned criminal cases should both be dismissed.

BEST COPY AVAILABLE

THE GOVERNMENT'S MOTION FOR VOICE EXEMPLARS SHOULD BE DENIED:

(A) IN THAT THERE IS NO SHOWING THAT THEY ARE MATERIAL TO THE PREPARATION OF THE GOVERNMENT'S CASE AND THE REQUEST IS UNREASONABLE;

(B) IN THAT THE MOTION IS UNRESTRICTED AS TO USE AND IS UNACCOMPANIED BY AFFIDAVIT;

(C) IN THAT SPECTOGRAPHIC ANALYSIS IS TOO INACCURATE TO BE ADMITTED INTO EVIDENCE.

(A) THE VOICE EXEMPLARS ARE NOT MATERIAL TO THE GOVERNMENT'S CASE AND THE REQUEST THEREFORE IS PATENTLY UNREASONABLE.

A post-indictment request to compel voice exemplars must be designated as a discovery motion and, consequently, is controlled by Rule 16 of the Federal Rules of Criminal Procedure. There is no provision in Rule 16 permitting the compulsion by the government of defendants' voice exemplars and the court thus has no authority to order them.

Assuming arguendo, that the court, as argued by the government, has the "fundamental authority" to compel voice exemplars, it is clear that the government must make a showing that the exemplars are material to it's case and that the request is reasonable.

See Federal Rules of Criminal Procedure 16 (C)

analagous cases

U. S. v. Frick, 490 F2d 666 (C.A.La 1973)

U. S. v. Conder, 423 F2d 904 (C.A. Tenn 1970)

cert. den. 91 S. Ct 357, 400 U.S. 958, 27 L Ed 267

U. S. v. Guinn, 364 F Supp 432 (D.C. Ga 1973)

LAW OFFICES
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On May 27, 1974, the government filed a "Notice of Readiness" with the court pursuant to the "Plan For Achieving Prompt Disposition of Criminal Cases" for this District and it thereby indicated that it was ready for trial on that date. Further, it may be noted that on October 20, 1975, the government, in open court, represented that it did not need the voice exemplars.

If the government is ready for trial then it should not need, nor should it be allowed to obtain, voice exemplars. If, on the other hand, the government needs the voice exemplars and thus is not in fact ready for trial, it is respectfully submitted that the defendant's motion to dismiss under "Rule 4" should be granted. It would be unfair to allow the government "to eat its cake and have it too."

(B) THE GOVERNMENT'S MOTION IS UNRESTRICTED AS TO USE AND IS UNACCOMPANIED BY AFFIDAVIT.

It is conceded that under certain circumstances a voice exemplar may constitutionally be required of a suspect or a defendant.

United States v. Dionisio, 410 U.S. 1, 93 S Ct 764, 35 L Ed 2d 67 (1973), reu'g in part, aff'd in part, 442 F 2d 276 (7th Cir 1971)

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However, there would be a Fifth Amendment violation if the voice recordings are to be used for the "testimonial or communicative content" of what is to be said, rather than to be used "solely to measure the physical properties" of the person's voice.

United States v. Dionisio, supra, at page 7

United States v. Ryan, 478 F2d 1008, 1012 (5th Cir 1973)

Further, before a voice exemplar should be ordered the government must make "minimum showing by affidavit" that the exemplar sought is (1) relevant and necessary to the particular criminal proceeding within which it is sought and (2) not sought primarily for another purpose.

See In Re Grand Jury Proceedings, 486 F2d 85 (3rd Cir 1973) (Schofield I);

In Re Grand Jury Proceedings, 507 F2d 963 (3rd Cir 1975) (Schofield II)

Though Schofield I and II dealt with Grand Jury proceedings the court made it clear that the government has no general right to voice exemplars at any stage in the criminal proceedings and that the ordering of same is subject to the District Court's supervisory power over criminal proceedings.

Herein, the government's motion to compel voice exemplars merely states that it "will ask the defendants to read a paragraph relating to the Declaration of Independence and will record said readings in order to make a comparison of the voices."

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The government's motion should be denied for the following reasons:

(1) In that there is no affidavit that the voice exemplars are relevant or necessary to this proceeding.

(2) In that there is no affidavit that the voice exemplars are to be used solely for this proceeding.

(3) In that there is no affidavit that the voice exemplars will be destroyed following the conclusion of this proceeding.

(4) In that there is no affidavit that the voice exemplars are to be used solely to measure the physical properties of the voices of the defendants.

(C) SPECTOGRAPHIC ANALYSIS IS TOO INACCURATE TO BE ADMITTED INTO EVIDENCE.

In United States v. Addison, 498 F2d 741 (D.C. Cir 1974) aff'g 337 F Supp 641 (D. D.C. 1973) it was held that spectographic (voiceprint) analysis was too inaccurate to be admitted into evidence.

> "In Frye v. United States, 54 App. D.C. 46, 293 F. 10[illegible] (1923), this court set forth the standard by which questions of admissibility of expert testimony based on new methods of scientific measurement are to be resolved. The Frye standard has been adopted by numerous courts since that time, see, e.g., United States v. Stifel, 433 F.2d 431, 438 (6th Cir 1970); Marks v. United States, 260 F 2d 377, 382 (10th Cir 1958), cert. denied, 358 U.S. 929, 79 S.Ct. 315, 3 L. Ed. 2d 302 (1959); and the Frye holding was recently reaffirmed by this court in United States v. Skeens, 494 F2d 1050 (D.C. Cir 1974), a case in which we adhered to the earlier determination to exclude polygraph evidence from criminal trials."

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"The Frye standard for determining whether a generic class of scientific evidence is to be admitted at trial requires that the '[theory] from which the deduction is made be sufficiently established to have gained general acceptance in the particular field in which it belongs.' Frye, supra, at 1014. This obviously sets forth a standard that is neither common to criminal litigation nor easily applied in the individual case. Equally obvious, the Frye standard retards somewhat the admission of proof based on new methods of scientific investigation by requiring that they attain sufficient currency and status to gain the general acceptance of the relevant scientific community. This is not to say, however, that the Frye standard exacts an unwarranted cost. The requirement of general acceptance in the scientific community assures that those most qualified to assess the general validity of a scientific method will have the determinative voice. Additionally, the Frye test protects prosecution and defense alike by assuring that a minimal reserve of experts exists who can critically examine the validity of a scientific determination in a particular case. Since scientific proof may in some instances assume a posture of mystic infallibility in the eyes of a jury of laymen, the ability to produce rebuttal experts, equally conversant with the mechanics and methods of a particular technique, may prove to be essential..."

"...while...spectrogram analysis may become a useful tool for the resolution of questions of criminal liability, it is equally clear that techniques of speaker identification by spectrogram comparison have not attained the general acceptance of the scientific community to the degree required in this jurisdiction by Frye. Whatever its promise may be for the future, voiceprint identification is not now sufficiently accepted by the scientific community as a whole to form a basis for a jury's determination of guilt or innocence..."

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It is respectfully submitted that this court should adopt the Addison rule and not permit spectographic analysis to be admitted into evidence. If the court adopts that rule, then it is clear there is no reason whatsoever for the government to take voice exemplars in this matter.

Dated at Bridgeport, Connecticut, this 28th day of October, 1975.

RESPECTFULLY SUBMITTED,
ON BEHALF OF ALL DEFENDANTS,

Harold L. Rosnick

HAROLD L. ROSNICK
SIGMUND L. MILLER, P.C.
Attorney for Roger L. Spinelli

Richard T. Meehan

RICHARD T. MEEHAN
McNamara, Maiocco, Meehan & Pinto
Attorneys for

CERTIFICATION

This is to certify that a copy of the foregoing has been sent this 28th day of October, 1975, to John R. Tarrant, Esq., United States Department of Justice, Room 1703, United States Post Office and Courthouse, Boston, Massachusetts 02109; Peter R. Casey, III, Esq., Special Attorney, 450 Main Street, Hartford, Connecticut; and to counsel of record.

Harold L. Rosnick

HAROLD L. ROSNICK

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MICROFILM
DEC 13 1974
NEW HAVEN

FILED
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. H-298
	:	
WILLIAM R. BALOG,	:	
NICHOLAS V. LANESE,	:	
DANIEL LEVIN,	:	
RICHARD M. LANESE,	:	
CHARLES S. SUGLIA,	:	
LOUIS MASTRO,	:	
NICHOLAS MESSINA and	:	
WALTER T. HARDY	:	

O R D E R

The order of June 28, 1973 staying the proceedings in the above-captioned case is hereby vacated.

Dated at New Haven, Connecticut, this 11th day of December, 1974.

Robert C. Zampano
United States District Judge

DEC 17 9 26 AM '75

U.S. DIST. COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

V. : CRIMINAL NO. H-298

WILLIAM BALOG, Et Al. :

RESPONSE OF THE UNITED STATES TO DEFENDANTS' MOTION TO DISMISS THE INDICTMENT

The defendants have moved for dismissal of the indictment on the grounds that the government was not ready for trial within the six months prescribed by the District Court of Connecticut's Plan for Achieving Prompt Disposition of Criminal Cases*. The salient facts are as follows:

June 29, 1972 - defendants arrested.

August 7, 1972 - Suglia Motion filed.

August 14, 1972 - Hardy Motions filed.

August 15, 1972 - Motions filed by Messina, Balog, R. Lanese, N. Lanese, Gordon, Mastro, and Levin.

September 15, 1972 - Decision Reserved on Motions for Bills of Particulars and Discovery and Inspection.

October 24, 1972 - Decision Reserved on Motions for Bills of Particulars and Discovery and Inspection; all other Motions Off Without Prejudice.

March 6, 1973 - Rulings on Motions for Bills of Particulars and Discovery and Inspection; all others Off Without Prejudice.

June 27, 1973 - Motion to Stay Proceedings filed by government (with all defendants consenting).

*Hereinafter referred to as the "Plan".

May 28, 1974 - Government Notice of Readiness filed.

The United States accepts, as time chargeable against it under the Plan, the periods between arrest and the filing of motions by the defendants. This would amount to 39 days for defendant Suglia, 46 days for defendant Hardy, and 47 days for all others.[1] The defendants then ask the Court to find that the period from September 25, 1972 until March 6, 1973, during which the Court reserved decision on two pending matters, should not be excluded from the six month computations, but should be charged against the government. Rule 5(a) of the Plan, however, clearly excludes:

> "[t]he period of delay while proceedings concerning the defendant are pending, including, but not limited to proceedings for the determination of competency and the period during which he is incompetant to stand trial, pre-trial motions, interlocutory appeals, trial of other charges, and the period during which such matters are sub judice.[2]" (emphasis added).

The government would therefore argue, by the plain meaning of the Rule, that this period cannot be charged against the government in computing the six months allowed it.

The defendants next claim the period between March 6, 1973 and June 27, 1973, a period of 113 days (the defendants claim 111 days).

1/ See, however, the government's response to the Motion in H-299 in which it is argued that, in a multi-defendant case, the filing of Motions for one defendant tolls the period as to all defendants. If this viewpoint is accepted by the Court, 39 days would be chargeable against the government as to all defendants in H-298.

2/ Defined by Black's Law Dictionary, 4th Ed., 1968, pg. 1593 as "Under or before a judge or court; under judicial consideration; undetermined".

While the Court, on March 6, granted a defense motion for an extension of time to file additional motions, which the government would argue further tolled the period under Rule 5(b), we have thus far been unable to determine the extent of the requested continuance and, therefore, accept the period of 113 days as chargeable against the government.

The defendants next argue that the period between the rendering of the Chavez and Giordano decisions by the Supreme Court and the filing of the government's Notice of Readiness should be computed against the government. The United States, however, disagrees with this position for the same reasons set forth at length in the government's Response to the Motion to Dismiss in H-299. Thus, the government argues that the six months allowed the government under the Plan had not expired as to any defendant in H-298 at the time that Notice of Readiness was filed.[3/]

For the above-stated reasons, the United States respectfully moves that the defendants' Motion to Dismiss the Indictment be denied.*

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

BY: Peter R. Casey III
PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

3/ Totals per defendant - Suglia 152; Hardy 159; all others 160.

*The other issues raised by the defendants are treated in the government's Response in H-299.

C E R T I F I C A T I O N

This is to certify that copies of the foregoing Response have been mailed, postage prepaid, this 16th day of December, 1975 at Hartford, Connecticut to all counsel of record.

Peter R. Casey III

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

FILED
OCT 23 9 45 AM '75
U.S. DISTRICT COURT
NEW HAVEN, CONN.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

THE UNITED STATES OF AMERICA,	
vs.	Criminal Action
WILLIAM R. BALOG, et al.,	No. H-298
Defendants.	
THE UNITED STATES OF AMERICA,	
vs.	Criminal Action
ROGER L. SPINELLI, et al.,	No. H-299
Defendants.	

United States Court House
New Haven, Connecticut
October 20th, 1975

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

For the Government:

PETER CASEY, III, Asst. U. S. Attorney
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Hartford, Connecticut

BEST COPY AVAILABLE

Appearances (Continued):

For the Defendants:

RICHARD T. MEEHAN
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VICTOR M. FERRANTE
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Bridgeport, Connecticut

RICHARD L. ALBRECHT
10 Middle Street
Bridgeport, Connecticut

CHARLES HANKEN
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Bridgeport, Connecticut

HAROLD ROSNICK
355 Main Street
Bridgeport, Connecticut

DANIEL SHERRO
177 State Street
Bridgeport, Connecticut

W. PAUL FLYNN
132 Temple Street
New Haven, Connecticut

ELAINE S. AVENDLA
333 State Street
Bridgeport, Connecticut

THE COURT: The only other matters before the Court involves Criminal No. H-208, United States of America versus Balog, and H-209, United States of America versus Roger Spinelli.

Are all the attorneys in the courtroom here with respect to those motions?

MR. MEEHAN: Yes, your Honor.

MR. CASEY: Yes, your Honor.

THE COURT: How shall we proceed? Anyone have a suggestion as to which motion should go forward first?

MR. MEEHAN: Well, there's two motions, your Honor. One is our motion, a motion to dismiss; and then there's the government motion for permission to take voice exemplars.

THE COURT: All right.

MR. MEEHAN: On our consolidated motion to dismiss, we'd ask the Court to consider this period of time to be computed under the Rule 4 and 5 of the Second Circuit Rules, and that is, it is our contention, your Honor, that on July 3rd, 1972, the defendants were arrested, and motions were filed on July 28th of 1972. So there's a period of fifteen days.

On March 6th, '73, there was an order entered on those motions, and then we go next to June 28th, 1973, when the stay was ordered because of an attempt to ascertain or wait, rather, for the decisions on Giordano.

THE COURT: What was that last date?

MR. MEEHAN: March 6th, '73, to June 28th, 1973, that

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would be a hundred and twelve days, your Honor.

Then on March -- on May 13th, 1974, when -- when the Giordano case came down to -- May 27th of '74 when the -- there's another fourteen days.

Then on December 11th, '74, the stay was vacated by your order and there was no --

THE COURT: What date was that?

MR. MEEHAN: December 11th, I believe, it was '74, your Honor -- December 11th, 1974, the order of June 28th, 1973 staying the proceedings in the above-captioned case, is hereby vacated.

THE COURT: All right. So the stay was vacated on December 11th, 1974.

MR. MEEHAN: I know, but we're -- we're also claiming, too, your Honor, that it was vacated the time of Giordano, which was May 13th of '74.

THE COURT: All right.

MR. MEEHAN: You see, and that was the purpose for the delay.

Now --

THE COURT: I see.

MR. MEEHAN: -- I think the -- on October 18th of '74, the -- in a letter by Mr. Casey to your Honor, he asked that the matters are set down for a conference, and -- and then the government asked for voice exemplars on -- on January 7th, 1975.

Now, I know the government is going to argue that they filed a notice of readiness with the Clerk that they were able to go forward and try this case at the time of the notice, and, yet, if that were so, your Honor, what would be -- what would be the necessity of -- where there's no other motions pending now -- what would be the necessity of their having now to have voice exemplars?

Obviously, they need it -- to prosecute their case.

Now, the other -- the other question is, your Honor, if -- if they claim that at the time of their notice that they could have been ready, even with being granted the order for voice exemplars, that they could have been ready within ten days, I'd ask your Honor to consider how that could have been possible.

We -- we know that -- just compiling the voice exemplars alone of all the defendants in this case and sorting out those samples or tapes or recordings or interceptions that they ave on taps, and then submitting it to an expert to determine by way of oscilloscope, or what have you, that -- that this particular person, this particular defendant, was that voice, I would submit, would take way beyond ten days.

I think that the gist of the matter, your Honor, is that the government was not, in fact, ready to go forward at the time that they filed their notice.

Now, if you look at the court calendar, too, your Honor, you see back -- March 6th of '72, there was rulings on the

defendants' pretrial motion, and all other motions went off without prejudice. So, actually, we --

MR. CASEY: I'm sorry, I didn't catch that.

MR. MEEHAN: That's the court calendar of March 6th, 1972.

So that we had no motions pending which under the rule could be used against us, let's say, in -- in computing the time factor.

THE COURT: Two questions: One, do you recall what occurred on December 10th, 1974, when we had a meeting between the Court and counsel?

MR. MEEHAN: My best recollection, your Honor, is that the Court wanted us to see if we couldn't confer as defense counsel and elect -- select lead counsel, to see what, if any, motions would have to be filed after that, and accordingly, we met and we made a determination what motions we would file.

Now, we felt among ourselves, as a group, that the two possible remaining motions would be a motion to suppress pertaining to the wiretapping, which would be handled by one counsel in our group, and a motion to suppress the physical evidence that was seized as a result of search and seizures with a search warrant preceding the arrest.

But we also felt, your Honor, that it was our consensus as a group among defense counsel that it wasn't necessary at this time to file these motions, and we held off filing these

motions because we felt that the motion to dismiss, this motion, the appropriate motion to present before the Court, and while it was pending, too, we did not want to file any subsequent motions and thus impede ourselves or penalize ourselves or our clients and come within the exclusions under Rule 5.

THE COURT: Did the Court at any time set this case down for trial?

MR. MEEHAN: No, not my -- my recollection, your Honor, that it was not set down for trial.

I'd ask your Honor in the case of the -- of the government submitting a notice of intent to go forward, and then on the -- by the same token, requesting voice exemplars, I'd ask your Honor to consider the Pollak case, U. S. versus Pollak, at 474 Fed. 2nd, 828.

Now, on page 830 there, the Appellate Court said: "As for the speedy trial claim under the Second Circuit rules, however, we are handicapped for lack of a finding," and they cite the Scafo case. "We must vacate the judgment and remand for further hearings on the motions to dismiss and specifically findings on the issues whether there were 'exceptional circumstances' justifying 'periods of delay' within Second Circuit Rule 5(h). Such circumstances, we may point out, may, within limits of reasonableness, include the press of other business on the Court, or perhaps an extraordinary situation in the prosecutor's office. The government argues that it complied

with the rules because it filed a 'notice of readiness' on November 18th, 1971, but it had not complied with the discovery order. One question is its notice of readiness was, therefore, meaningless."

And that is what we ask your Honor to consider, that -- that -- that the fact that they filed this notice of intention is, in fact, and was, in fact, mearinglass unless the government can now convince your Honor by submission of some kind of evidence that it was ready to go forward at that time within ten days of filing that notice.

Now, the other question we'd like your Honor to consider is -- and this has to do something with the motion on the voice exemplar -- is this: our argument is going to be that they're not at this time entitled to a voice exemplar. They cite the Dionizzio case, your Honor, and the other case having to do with handwriting exemplars. I believe it's the Mara case. But the distinction in those cases, your Honor, are that those requests were made before a grand jury, and this is -- they're making this request for evidence at a trial.

So I don't think DioNizzio and Mara apply here. Because in those cases, the question was: did they have the Fifth Amendment right before the grand jury as a witness to give a voice exemplar or handwriting exemplar?

That's not the situation here. What the government is trying to do here is -- they're attempting to get a voice

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exemplar from a defendant who has been indicted and who they are prosecuting to use as evidence to support their case.

Now, again, I think, your Honor, if the government -- and it's not going to be sufficient, I submit to the Court, for Mr. Casey just to get up and tell your Honor that the government was ready to go forward at the time of -- they filed their notice. I think Mr. Casey is going to have to put something more convincing on the record to show that absent those voice exemplars the government could have proceeded to trial and started the trial.

And just knowing some of the background of the cases, I'm sure your Honor is -- is aware of, just from motions that have been filed, it is obvious it's a wiretap situation, and obviously, to prove conspiracy, a wiretap involving interception of wire -- of telephone communication, you are going to have to have scientific evidence, such as the government would hope to show through the -- getting the voice sample, voice exemplar.

So we submit to your Honor that our time is computed well beyond the six-month period.

Thank you.

THE COURT: Would any other --

MR. MEEHAN: I'd like to add another case, if your Honor please, the two Scafo cases, U. S. versus Scafo, 470 Fed. 2nd 748.

THE COURT: What was that citation again?

MR. MEEHAN: U. S. versus Scafo, 470 Fed. 2nd, 748.

And then the second case -- the first case, your Honor, they remanded for the District Court to make a finding on this six-month rule; and the other case is U. S. versus Scafo, 480 Fed. 2nd at 1312.

And what I think is significant in the second Scafo case is the holding there that there's no presumption that having sufficient evidence to warrant indictment the government is necessarily -- or is necessarily an indication that the government is ready for trial.

So this is part of our argument. That just because they got an indictment here and they file a notice that they're ready to go to trial, that's not sufficient, and now taken with their request for voice exemplar, certainly indicates to me that they didn't think they had a case to go to trial or why the necessity for the voice exemplars?

Thank you.

THE COURT: Would any other defense counsel wish to address themselves?

MR. ROSNICK: Harold Rosnick, from Sigmund Miller's office.

At this time that the government filed their motion to stay the proceedings pending the decision in Giordano and Chavez, they specifically indicated on there the stay was only to be granted until the decision in Giordano and Chavez came

out.

When the decision came out in May of 1974, they thereafter -- I think it was about seven or eight months thereafter -- filed a motion to terminate the stay. And we indicated to the Court at that time by letter that there was no need for that motion to be heard, because the stay had been lifted by virtually the decision itself, and I would just like to emphasize to the Court that it was our position then, it is our position now, that the stay was lifted as of the time of the publication of the decisions.

THE COURT: Well, then, thereafter the government filed its notice of readiness.

MR. ROSNICK: Which we claim they weren't, in fact, ready on.

THE COURT: Well, let's just assume they were ready, let's just assume there's no motion for voice exemplars. What would your situation be?

MR. ROSNICK: Well, as Mr. Meehan has indicated, you have to consider the computation of periods of time prior to the filing of the motion for staying the proceedings.

For instance, there was thirteen days between the time of the indictments and the filing of the original motions. That period of time would have to go into the overall computation.

There was a period of time prior to the stay of the proceedings where all motions went off, and I don't know the

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extent of the time, but I figured -- I feel -- Mr. Meehan is indicating to me now it was a hundred and twelve days.

THE COURT: Is that all set forth in your brief? On this? This computation that you asked me to adopt?

MR. ROSNICK: No. The computation time, I see, is not in our motion.

MR. MEEHAN: It is not, your Honor. We did not file a brief in support of this motion, we elected instead to argue orally, and then submit a brief if the Court --

THE COURT: It would be very helpful for me to have a brief. For two reasons: One, factually, I just want to make sure that your statement of the facts with respect to dates dovetails into the government's calculations. That's one.

Two, there's quite a bit of law available on speedy trial, and I would like benefit of as much aid as I can. Yet, I don't want this case delayed any longer if I should deny the motions. I am ready to try this case as soon as counsel are ready.

What -- assuming I deny the motions, just for the sake of argument, what's the situation with counsel?

MR. MEEHAN: Your Honor, I'm on trial downstairs with Judge ---

THE COURT: Are you in that Shelton bombing case?

MR. MEEHAN: Yes, sir. I got in about a week and a

half ago, and there's a fair estimate there that the Court indicated to the jury that at least six weeks, and I would say that's a -- it's going to be longer than that. I would estimate probably at least two months, if not more, on that trial.

And the other question is this, your Honor: I have an understanding with my four clients, and I stated this before Judge Clarie when I appeared for the arraignment, that I would be able to represent them in the preliminary stages here, but if it came to trial and there was a conflict in representing the four of them -- and I can tell your Honor that there certainly would be a conflict, I feel, to represent them in this case in -- in the actual trial, then I had it understood on the record with Judge Clarie that I would indicate this to my clients and they would have to obtain -- three of them would have to obtain other counsel.

THE COURT: What client would you stay in for?

MR. MEEHAN: Nicholas Lanise. I would not be able to represent Richard Lanise, Michael Balog or Nicholas Mascino.

THE COURT: What's the situation with other counsel?

MR. MEEHAN: May I just say about the brief, your Honor, that it was my understanding that we could argue this orally without a brief if we comply with the notice that was sent out to us, and our office did call Mr. Frederickson and -- I'd be more than happy -- I could have a brief in on this, your Honor --

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THE COURT: All right.

MR. MEEHAN: -- within a week, if you want.

THE COURT: All right. Would any other lawyer like to submit a brief or be heard in argument?

MR. ROSNICK: If your Honor please, on the question of timing for trial, I think it would be incumbent upon us to point out that at the time that your Honor suggested that we get together and file -- appoint lead counsel and file consolidated motions, the order which it was agreed upon we would file motions would be, first, this motion to dismiss; second, a motion to suppress based on nonevidentiary matters; third, a motion to suppress which would be based upon evidentiary matters.

And I point that out because on the evidentiary questions, we are going -- feel that it would be necessary for us to subpoena Mr. Peterson or take his deposition, Mr. Mitchell or take his deposition, and these are matters that are going to take some time, I would -- you know, I can't see how it wouldn't take some time. We would like to get going on this as quick as possible, but I think that to talk about an immediate trial is not realistic at this time.

THE COURT: Mr. Casey, what would you like to say?

MR. CASEY: First of all, your Honor, I'd like to point out that the government feels a definite need to set some type of scheduling in this case. As your Honor is aware, the

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conference was held last December and its sole purpose was to expedite matters in this case. Thus far, there really hasn't been any expedition, there hasn't been any activity.

For example, on August 5th, I received a letter from Mr. Rosnick stating that he would forward his brief on his motion to suppress as soon as it was completed. Well, to date, I have not received that. Mr. Rosnick says, "Well, we're going to need depositions from Mr. Mitchell, Mr. Peterson." These are all things, your Honor, that could be -- in the past almost year, could have been dealt with. I really strongly urge the Court to adopt some type of schedule so thatwe can work within definite limites on this case and so that it will not drag out any more than is necessary.

Now, turning to the -- to the issues, your Honor, I'd like to point out that in the motion on the speedy trial issue -- and, of course, as the Court knows, there has been no brief filed to which the government could really respond, although we have submitted a memorandum in response -- the defendants quite specifically point out in paragraph four that the government acknowledged that the stay of execution -- stay of proceedings was terminated on May 13th.

In paragraph five, they state: "More than eight months have elapsed since the stay of proceedings were terminated."

Now, of course, this seems to -- they seem to assume that the stay was automatically lifted simply by the decision,

although it was the Court that imposed the stay, and in our feeling, it should be the Court which lifts the stay.

But, nevertheless, they seem to be saying in this motion: "We're concerned about the time following the Giordano decision and not before that."

Of course, today they come forward and they say: "Well, there's all this time prior to that, too." Of course, if my calculations are correct from the statements made by defense counsel, the prior proceedings could only account for a hundred and twenty-five days, and, as your Honor is aware, the government is allowed six months.

Now, I believe it was within a week, certainly not more than two weeks, after the Giordano and Chavez decisions were filed that the government indicated its readiness for trial.

In October, due to the fact that nothing had happened, I submitted a letter to the Court in which I requested that some type of conference be held so that we could expedite matters.

Now, the government -- I made a decision after getting into the case -- as your Honor knows, I came into the case last year, in September -- I made a decision that it would be good if the government had voice exemplars. I reviewed the case. I assure the Court the government was ready for trial then, it is ready for trial now.

The question is -- is whether the government has the right at this date to seek voice exemplars. Now, I have submitted

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a memorandum on this issue, which I hope the Court has before it. And I would simply like to point out, if I may, that voice exemplars are considered to be a physical characteristic. The Supreme Court has said quite explicitly there is no Fifth Amendment privilege for handwriting exemplars, for voice exemplars or other physical characteristics.

And in many cases, defendants have been compelled to utter words at their trial. They have been compelled to don clothing at their trial.

Now, the voice exemplar process here would not take a great deal of time. What it requires, your Honor, is the defendants, at a mutually convenient time, appearing at a mutually convenient office, and giving them. There's not going to be any drawn out scientific tests, they're simply going to be compared with voices that the government already has in its possession.

And I would like to bring to the Court's attention a couple of cases. United States versus Francks, 511 Fed. 2nd 25, at page 32, which is a Sixth Circuit case, 1975, in which an order requiring voice exemplar seven months after arrest was not too late. It was found to be not too late by the Court.

And in United States versus Lincoln, 494 Fed. 2nd, 833, a Ninth Circuit case in 1974 --

THE COURT: May I have that citation again?

MR. CASEY: Yes, your Honor. United States versus

Lincoln, 494 Fed. 2nd, 833 -- the Court of Appeals found that a government's motion to compel handwriting exemplars less than one week prior to the trial date presented no problems whatsoever.

We would contend, your Honor, that the government is ready for trial. This is simply a question as to whether the government will be able to present a more efficient, a more expeditious case by being able to use voice exemplars than not.

If the Court should determine that it's too late for the government to come in and ask for voice exemplars, which I hope it won't, if it should, it makes no difference, the government is still ready to go forward. And the government has been ready to go forward.

Now, I would draw the Court's attention to the docket sheet in these two cases. Because -- because an even superficial view of that docket sheet, your Honor, shows that throughout the case there have been motions pending. There have been motions which have been put off, there have been motions which have been pending for some time.

A prime example is the motion to suppress. Obviously, a very crucial issue in this case, which has never been decided.

MR. HUTTON: Excuse me. So we could keep track of that, would you point out in the -- would you point out in the Court's log where we could find that? Where the motion to suppress was filed?

MR. CASEY: Well, I'll have to direct you to the --

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look at the docket sheet.

THE COURT: Do you have a copy of the docket sheet?

MR. CASEY: Not with me, your Honor. I've my own rough copy.

THE COURT: What do your notes indicate on that? Because counsel a few moments ago said that they did not file a motion to suppress.

MR. MEEHAN: That's why we -- we have a docket -- here, your Honor --

MR. CASEY: Your Honor, I have -- in 1973, on November 1st, I have a reference here that a brief was filed by the defendant Piazza on a suppression issue.

MR. MEEHAN: I don't think he's a defendant here, though, your Honor.

THE COURT: Which defendant, Mr. Casey?

MR. CASEY: That was defendant Piazza, your Honor.

MR. ROSNICK: If your Honor please, I think this may be helpful. Back in December of 1974, when you asked us to get together and appoint lead counsel so that the record may be clear on our motions, you indicated that all pending motions, if any, would go off, and that if we were to file a motion to suppress, it would be a consolidated motion. So that as of December of 1974, there were no pending motions.

MR. CASEY: Well, your Honor, I mean either there have been pending motions throughout the case, or there haven't.

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The government position is that there had been pending motions. They have been defense motions. That nowhere by the -- any computation do I feel you are able to even come close to the six-months limitation. Especially keeping in mind that immediately after the Chavez and Giordano decisions the government filed its notice of readiness.

The government wrote a letter in October asking that things be expedited. And I simply ask the Court to review the government's memorandum which has been submitted on both the issues: the issue of the speedy trial, the issue of the voice exemplars. Please review the defendant's own motion in which he seems to claim quite clearly, I feel, that their only claim is to the period following the Giordano and Chavez decision.

And I would request, your Honor, that if the defendants do file motion, that the government be allowed a short period of time to review it and to file its own supplemental response to that.

THE COURT: All right. Did you say, Mr. Meehan, that a week would be enough for you to get the brief in -- and I assume this is a brief in behalf of all the defendants on this issue?

MR. ALBRECHT: Yes.

THE COURT: One week?

MR. MEEHAN: Your Honor?

THE COURT: Yes.

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MR. MEEHAN: May I also ask the Court at this time to make a finding by reviewing the record, the Clerk's record, as to whether or not there was, in fact, a motion to suppress pending when the government just indicated that there was, make a finding whether that is factually so or not? Will you make that determination before deciding this?

THE COURT: No, I will not. How can I make that determination?

MR. MEEHAN: Well, we -- I -- if your Honor please, my understanding is --

THE COURT: Well, you take a position. Your position is that there was no motion pending; the government says there was, and the Court decides it.

MR. MEEHAN: These cases I cited to your Honor, there's a need for a finding by the Court before the motion -- this motion should be --

THE COURT: Need for a finding on what?

MR. MEEHAN: A finding as to the facts presented to show whether or not there was compliance with the rule. And I think it's necessary for your Honor to make a finding exactly what the stats of the record now pertains to -- or contains.

THE COURT: No. You take your position in your brief as you did in oral argument. The government will take its position, and then I'll make my finding based on the adversary presentment to me.

How in the world can I possibly make a finding now? You are saying something is in the docket sheet, and the government says it isn't, or vice versa. I don't have the docket sheet in front of me.

My recollection is that, subject to a hundred and eighty degree turnabout when I review my notes and consider this case -- that I probably did say in December, 1974, that all motions are to be considered off, and that we'll have a lead counsel appointed and consolidate, and the motions should thereafter be filed.

That, to me, would appear to make some common sense. That's why I called you together in December: to get everyone together, get lead counsel appointed, get motions filed in behalf of all defendants.

The other evidence that indicates to me that I probably did that is that I've been doing the very same thing in almost all the multiple defendant gambling cases that are pending before me. I've been getting the lawyers together trying to get lead counsel appointed, have consolidated motions filed, consolidated briefs, and ruling in that fashion.

I have every reason to believe I probably did it in Balog and Spinelli. Now, if that's so, there would be no motions pending as of that date when I stated that all motions were off.

MR. MEEHAN: That's our recollection of it, your Honor.

THE COURT: Well, then, take that position in your brief. But I can't make individual factual findings this morning when the government's attorney indicates that he has -- that he's relying on a document, and I don't have that document in front of me.

MR. CASEY: Well, your Honor, may I make some additional comments? Just very briefly?

THE COURT: Yes.

MR. CASEY: The point I was trying to make is: is that from the inception of the case to the present day, there have been continual periods when motions have been pending of one type or another. Now, I did not that there was this suppression motion which was filed on 11 -- November 21st, which would be after the motion to stay was filed and granted. But I fail to see, your Honor, how, if there have been motions pending prior to the stay or prior to December when your Honor put all the motions off -- how can the government be charged with all this time? I mean that seems to be the defendants' position, and I just fail to see how the government can be -- can be charged with all that time when, in fact, there have been motions pending. And there were very good reasons why decisions were not being made.

THE COURT: All right. What I need is a statement of facts with counsel's determination of dates upon which the Court must test the rule, counsel's calculations and counsel's

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conclusions as to what follows from those calculations.

The government thereafter should respond and either agree with the factual statements and disagree with the conclusions, or disagree with the factual statements in such a way that I can resolve the conflict.

Now, to do that, we need briefs and we need time to get the Court all the pertinent information.

May I just test your recollection once more? In December, did we have a court reporter in the courtroom with us?

MR. ALBRECHT: Yes.

MR. MEEHAN: We were all sitting over here.

THE COURT: Yes, I recall clearly. At the end of the session, did I put anything on the record?

MR. ALBRECHT: I believe so.

THE COURT: I'll also put the court reporter to work next week by asking him to search his files and to type up what his minutes disclose of that date.

MR. ALBRECHT: Your Honor, may I make an observation --

THE COURT: Yes.

MR. ALBRECHT: -- of your colloquy with Mr. Meehan? In all of these type of cases, which your Honor is very familiar with, this type of litigation, there are peripheral defendants and there are target defendants. I happen to represent somebody whom I consider to be a peripheral defendant, the ex-wife of one of the codefendants in this case. I'm court appointed.

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My predecessor is deceased, died during the course of this litigation.

I understand that there has to be a lot of litigation insofar as determination of questions of suppression, and things of that -- and I can understand conflict of interest that Mr. Meehan has, things of that nature. But if I was representing my client alone, I'd want to get this case tried as soon as possible, because I would think that the government would have a tough time getting a conviction on my client. So although I'm -- I'm sort of being in a wave here of -- of motions that everybody else is filing, I have a concern -- and I want to say that I have a concern -- in future in this situation, and -- I mean, my client is a lady who's made -- has a job and is working, and I am fearful that two years hence from now this whole thing is going, you know -- if it's continued to proceed, it will be of a significant impact.

THE COURT: What's your client's name?

MR. ALBRECHT: Mahigel. Phyllis Mahigel. No longer Phyllis Mahigel, I forget what her -- change of name. But I can see, and I get the feeling, I've had this feeling before in this kind of case, I mean, according to what Mr. Meehan has in mind -- and he's lead counsel, so to speak, speaking for us -- but -- I can see that -- I just hope that I don't have the same problem that Mr. Kantrowitz had. I just would hope that -- you know, I'm not prejudicing my client's rights by saying, "Well, he's my

lead counsel. But he's telling me, you know, when the thing comes up, he's going to have to get out for three guys and another lawyer's going to have to be appointed, and I just wanted not to have the record indicate here or allude -- or your Honor allude to the fact that since, obviously, this case would take a long time to get to trial, anyway, because of Mr. Meehan's position and these other motions that are being contemplated by counsel who are sitting -- aside from him, and technically are lead counsel, I don't necessarily ascribe to that, and I am not saying that I should have a separate trial, but I -- I don't want to be tarred with your Honor feeling: well, there hasn't been much prejudice here towards the defendants because look at all that has to be done yet, anyway, and the lawyers haven't done it, and I just want --

THE COURT: Well, I think your comments are well taken. I suppose that the way we should proceed is: first of all, get over this first hurdle, and that shouldn't take too long. That could be done while Mr. Meehan is on trial downstairs.

Then, if I rule against the defendants, Mr. Meehan -- and I have no reason to doubt he made these representations to Judge Clarie -- will then just represent one of the defendants, the others will immediately go out and get new attorneys. And I am not going to wait too long for that. The motions to suppress, I could hear in a matter of days. I don't see why this case shouldn't go forward when Mr. Meehan is completed with the

Shelton bombing case. Or at least the motions to suppress to be followed immediately by a trial.

I'm ready. Baloq and Spinelli has been on the -- the cases of Baloq and Spinelli have been on my mind for some time, and I thought I assigned them for trial. I guess what happened is I intended to assign them for trial, and I would check with counsel and then find that there was some problem.

But the Court is ready to try this case just as soon as we can dispose of these pretrial motions.

I would think that if the motions are decided promptly -- and I am sure they probably will be -- I think we could try this case as soon as Mr. Meehan is finished downstairs, so long as the other attorneys aren't involved in some other litigation.

What's your position, Mr. Flynn? Did you want to say something? You advanced --

MR. FLYNN: I'd like to be able to make a three-minute argument about Mr. Casey's application to take voice exemplars three years after an indictment, your Honor.

THE COURT: O., sure, certainly, go ahead.

MR. FLYNN: I might add, too, that because of some matters in which I am involved with counsel on the second floor dealing with the United States Attorney's office in New York, that I've asked both the prosecution and the defense to give me their best estimateof the earliest date of finish. They said the

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earliest day would be Thanksgiving, and the latest just after Christmas.

THE COURT: That's the Shelton bombing case?

MR. FLYNN: Yes, sir. And that was to make a representation to the United States Attorney's office out of the state so that another judge would be able to schedule us without creating problems.

THE COURT: Schedule you?

MR. FLYNN: Myself and Mr. Clifford are involved in a matter in the Southern District of New York, and I had to give them some idea of how long Mr. Clifford might be tied up, because he's court appointed, and rather than just take counsel's representations, I asked the prosecutor's office as well. Mr. Dorsey gave me that as the earliest date.

THE COURT: All right. Now, what's this got to do with voice exemplars?

MR. FLYNN: Nothing. You just asked if I wanted to make any comment. I did.

THE COURT: All right. Now, you want what? One week to file briefs? Mr. Meehan?

MR. MEEHAN: Yes, sir.

THE COURT: Did you say one week?

MR. MEEHAN: Yes, sir.

THE COURT: All right. On or before Tuesday the 28th, the defendants will have their consolidated brief on the motion

to dismiss filed. At the same time, if they wish, they can respond to the Francks and Lincoln case cited by the government with respect to the voice exemplars.

The government shall respond -- before I set a date, what's your situation, Mr. Casey? Are you on trial?

MR. CASEY: Trialwise, your Honor?

THE COURT: Yes. Well, let me get around it this way: How much time do you want to respond to the brief submitted?

MR. CASEY: Oh, I would think that a week would be more than enough.

THE COURT: All right. Then, on or before November 3rd, the government shall file its reply brief.

MR. FLYNN: Do I understand your Honor doesn't want to hear three minutes of argument?

THE COURT: I'd be more than happy to hear from you, Mr. Flynn.

MR. CASEY: Before Mr. Flynn starts -- no. Go ahead.

MR. FLYNN: No? Your Honor, I would respectfully suggest as a procedural process that Mr. Casey's application is in itself not -- does not comport with what I understand to be the basic Dionizzio standard. In that matter, I would point out to the Court that there were representations by an officer of the Court that the exemplars were, quote, essential and necessary, and nothing in Mr. Casey's affidavit reaches that level.

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I would respectfully suggest to the Court, as well, that the application was made about thirty-one months after, at least, one of my client's died, so that -- after my client, now, was indicted, in this matter, because the indictment -- I believe the record would show -- was returned in July of 1972. There was no limitation to it -- to what purpose this exemplar may be used, and I do not understand that the government has the right under Dionizzio or any other case to go on what I would describe as a prosecutorial fishing expedition.

They have put no limitations -- they do indicate that they're going to have my client read from a portion of the Declaration of Independence. But I don't understand that any of they -- any of the examples that they used do not become testimonial at a time when the prosecution has already indicted my client for violating the law, and the recording is the violation, I suggest to the Court. The very statement, if it's bookmaking, of taking or making a wager or laying off bets, the very statement itself is the crime. They're not going to be using this, I suggest to the Court, within any of the standards that the Supreme Court considered in both Mara and Dionizzio. And without such a standard, it is not only at this time that an interest that I represent may be jeopardized, which I think the Court should refuse to grant it, but it may also be a problem at some future time when they will then justify the existence of such an exemplar on the basis that it was ordered pursuant

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to some mandate of this Court.

THE COURT: Anything further?

MR. CASEY: Just very briefly, your Honor. This is no Fifth Amendment privilege as to physical characteristics.

THE COURT: All right. Would the government order the transcript of the remarks made before the Court today?

MR. CASEY: Certainly, your Honor.

THE COURT: I think it would be very helpful. I think I misunderstood some of the dates that were going back and forth, and I would like to compare them with what my notes indicate. But if the government would order the transcript, it would be helpful.

MR. CASEY: Yes, your Honor.

THE COURT: Thank you. Adjourn court until 2 o'clock.

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C E R T I F I C A T E

I hereby certify that the within and foregoing is a true and correct transcript of notes taken by me to record all proceedings at the hearing held on _____, 19__, in the United States District Court for the District of Connecticut, at _____, Connecticut before the Honorable _____ United States District Judge.

_____
Official Court Reporter

Dated: _____, 19__

At: _____, Connecticut

MICROFILM
JUN 4 1976
BRIDGEPORT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA v. BALOG, ET AL	: : :	CRIMINAL NO. H-298
UNITED STATES OF AMERICA v. ROGER L. SPINELLI, ET AL	: : :	CRIMINAL NO. H-299

MOTION FOR SUPPRESSION OF EVIDENCE
AND FOR RETURN OF SEIZED PROPERTY

6/1/76
For reasons stated in open court, this motion is denied.
RCZ
4507

The Defendants in the above entitled matter move pursuant to the United States Constitution, pursuant to Rule 41 of the Federal Rules of Criminal Procedure and pursuant to 18 U.S.C. Sections 2510 2520 to suppress the contents of any and all intercepted wire and oral communications, or evidence derived therefrom, and to return all property seized from the Defendants on the grounds that:

(a) The communication was unlawfully intercepted;

(b) The order of authorization or approval under which it was intercepted is insufficient on its face;

(c) The interception was not made in conformity with the order of authorization or approval;

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(d) The interception application did not adequately show why traditional investigative techniques were not sufficient.

(e) The Justice Department made improper disclosure and use of the intercepted wire or oral communication in violation of the statute.

Dated this 6th day of April 1976.

RESPECTFULLY SUBMITTED,

HAROLD L. ROSNICK
SIGMUND L. MILLER, P.C.
Attorney for Roger L. Spinelli

Attorney for

Gregory B. Craig
Attorney for Louis Varrella

Attorney for

Attorney for

Attorney for

Joseph M Brophy
JOSEPH M BROPHY
Attorney for MICHAEL PIAZZA

Attorney for Angelo Lemmo

Attorney for

Attorney for

Attorney for

Attorney for

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BRIDGEPORT, CONN. 06604

CERTIFICATION

This is to certify that a copy of the foregoing has been sent this 6th day of April, 1976, to John R. Tarrant, Esq., United States Department of Justice, Room 1703, United States Post Office and Courthouse, Boston, Massachusetts 02109; Peter R. Casey, III, Esq., Special Attorney, 450 Main Street, Hartford, Connecticut.

[illegible]

[illegible]
STREET
CONN 06604

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA v. BALOG, ET AL	: : :	CRIMINAL NO. H-298
UNITED STATES OF AMERICA v. ROGER L. SPINELLI, ET AL	: : :	CRIMINAL NO. H-299

DEFENDANTS' BRIEF ON MOTION TO SUPPRESS

I ISSUES PRESENTED

A. WHETHER AN APPLICATION AND ORDER FOR A WIRE INTERCEPTION UNDER TITLE III OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, ARE "INSUFFICIENT ON THEIR FACE" IN RECITING THAT THE AUTHORIZING OFFICIAL IS AN ACTING ASSISTANT ATTORNEY GENERAL, AS A CONSEQUENCE OF WHICH THE CONTENTS OF ANY INTERCEPTED WIRE COMMUNICATIONS, AND EVIDENCE DERIVED THEREFROM, MUST BE SUPPRESSED PURSUANT TO 18 USC §§2518 (10) (a) (ii) and 2515?

B. WHETHER SUCH CONTENTS OF THE INTERCEPTED WIRE COMMUNICATIONS, AND EVIDENCE DERIVED THEREFROM, MUST BE SUPPRESSED I. THAT THE INTERCEPTION APPLICATION DID NOT ADEQUATELY SHOW WHY TRADITIONAL INVESTIGATIVE TECHNIQUES WERE NOT SUFFICIENT IN VIOLATION OF 18 USC §2518 (1) (c) ?

C. WHETHER SUCH CONTENTS OF THE INTERCEPTED WIRE COMMUNICATIONS, AND EVIDENCE DERIVED THEREFROM, MUST BE SUPPRESSED WHERE THE JUSTICE DEPARTMENT MADE IMPROPER DISCLOSURE OF THE CONTENTS OF THE WIRE INTERCEPTIONS IN VIOLATION OF 18 USC §§2511, 2517?

II STATEMENT OF THE CASE

Effective October 15, 1971, Mr. Will Wilson, Assistant Attorney General in Charge of the Criminal Division, United States Department of Justice, resigned, at which time Mr. Henry E. Petersen was the Deputy Assistant Attorney General for the Criminal Division, the latter office being one which does not require nomination by the President and confirmation of the Senate.

On January 11, 1972, Mr. Richard M. Nixon, then President of the United States, appointed Mr. Petersen (Acting) Assistant Attorney General of the United States in Charge of the Criminal Division, United States Department of Justice, in a recess appointment.

The President, on January 21, 1972, submitted his nomination of Mr. Petersen as Assistant Attorney General to the Senate. The Senate confirmed Mr. Petersen's nomination on February 3, 1972, and he took his oath of office on February 14, 1972.

On December 16, 1971, Special Attorney John R. Tarrant of the U. S. Department of Justice successfully submitted an application to the court for wire interceptions on certain telephones. The application recited, in part,

> "2. Pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable John N. Mitchell, has specially designated in this proceeding the Acting Assistant Attorney General of the Criminal Division of the United States Department of Justice, the Honorable Henry E. Petersen, to authorize affiant to make this application for an order authorizing the interception of wire communications." (emphasis added)

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A letter of authorization from Henry E. Petersen, "Acting Assistant Attorney General" to John R. Tarrant was attached to the application as Exhibit A. Such letter authorized Mr. Tarrant as follows,

> "...you are hereby authorized under the power specially delegated to me in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, to make application to a judge of competent jurisdiction for an Order of the Court pursuant to Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Investigation to intercept wire communications to and from the facilities described above, for a period of fifteen (15) days." (emphasis added)

The order of court which, like the application, was prepared by the government, stated that the authority to make the application was given by "the Acting Assistant General for the Criminal Division of the United States Department of Justice, the Honorable Henry E. Petersen, who was specially designated in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code..." (emphasis added).

In a memorandum dated December 15, 1971, John N. Mitchell, Attorney General, specially designated Henry E. Petersen, Acting Assistant Attorney General, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, USC. Such letter is attached to John N. Mitchell's affidavit dated November 16, 1972, which the government has filed in this case.

In Defendant Roger L. Spinelli's motion for production and discovery the government is asked, in paragraph 30, to identify all persons who authorized

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the interception herein. The government's answer dated August 21, 1972, to such request was that "the Government takes the position that the order and underlying application speak for themselves."

Defendants agree that the application, letter, order and memorandum above referred to speak for themselves and it is clear that Henry E. Petersen, Acting Assistant Attorney General, was specially designated by Mitchell under the Act to exercise his power to approve the request to make application to this court for an interception order, and Petersen, in fact, exercised such power.

Further, after the wire interceptions herein, the Justice Department indiscriminately provided the District Director: Manuel D. Aguiar, Internal Revenue Agent; and P. L. Dillon, Chief, Audit Division, of the Internal Revenue Service, Hartford District Office, as well as many other officers, agents, employees and divisions of such office, information relating to wagers made by the

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following defendants herein:

ROGER L. SPINELLI

The information was obtained as a result of the court authorized interceptions herein.

As a result of the information obtained from such interceptions by the Justice Department, the said District Director made Jeopardy Assessments under Code Section 6862 of the Internal Revenue Code as follows:

AS TO	TYPE OF TAX	CODE SECTION	TAXABLE PERIOD	TAX ASSESSED
Roger L. SPINELLI	WAGERING	4401	7/1/71-1/31/72	$121,963.6
Roger L. SPINELLI	OCCUPATIONAL	4411	7/30/71-6/30/72	50.00
				$122,013.6

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In the event the court finds that the application and order are not "insufficient on their face" or that there has not been an unauthorized use of the interception, then defendants reserve their right to an evidentiary hearing on disputed factual questions in regard to this motion to suppress.

III CONSIDERATION OF ISSUES

A. THE APPLICATION FOR AND INTERCEPTION ORDER ARE "INSUFFICIENT ON THEIR FACE" AND THE CONTENTS OF ANY INTERCEPTED WIRE COMMUNICATIONS, AND EVIDENCE DERIVED THEREFROM, MUST BE SUPPRESSED PURSUANT TO 18 USC §§2518 (10) (a) (ii) and 2515.

1. CHALLENGE TO VALIDITY OF INTERCEPTION ORDER

The defendants assail the validity of the application for, and the wiretap interception order on the ground that they "are insufficient on their face" and assert that the contents of any intercepted wire communication, and all evidence derived therefrom, must be suppressed pursuant to 18 USC §§2518 (10) (a) (ii) and 2515. They contend that under 18 USC §2516 (1) the Attorney General may specially designate only an Assistant Attorney General to authorize an application seeking a wiretap interception order, and that 18 USC §§2518 (1) (a) and 2518 (4) (d) require that the application for, and

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interception order must identify the officer authorizing the application. As shown earlier, both the application for, and the interception order in this case recite that the authorizing official was Mr. Henry E. Petersen, Acting Assistant Attorney General. An Acting Assistant Attorney General, it is represented, is not one who may be specially designated to authorize wiretap applications. For those reasons it is asserted that the application for, and the interception order reciting that the authorizing official was an Acting Assistant Attorney General are facially incomplete.

2. LEGISLATIVE HISTORY OF 1968 OMNIBUS CRIME CONTROL AND SAFE STREETS ACT.

The language adopted by Congress in enacting 18 USC §2516 (1) is clear and unambiguous. It provides, in part: "§2516. Authorization for interception of wire or oral communications.

(1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for ... an order authorizing or approving the interception of wire or oral communications ..."

Included within the organization of the Department of Justice are the Offices of the Attorney General and the Assistant Attorneys General, the latter of which number nine. All, without exception, first must be nominated by the President, confirmed by the Senate, and take the oath required before assuming their offices.

In considering the legislative history of §2516 (1) and the intent of Congress in enacting these precise provisions, the Fifth Circuit in United States v. Robinson, 5 Cir. 1972, 468 F.2d 189, in a comprehensive, lengthy commentary,

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pointed to this statement in S. Rep. No. 1097, 90th Cong., 2nd Sess., reprinted in 1968 U. S. Code Cong. & Admn. News 2112, 2185, concerning §2516 (1): "This provision centralizes in a publicly responsible official subject to the political process the formulation of law enforcement policy on the use of electronic surveillance techniques." [468 F. 2d at 192 -- emphasis supplied). The Fifth Circuit clearly found that "by expressing its intention that only a publicly responsible official subject to the political process could initiate a wiretap application, Congress wanted to make certain that every such matter would have the personal attention of an individual appointed by the President and confirmed by the Senate." (emphasis supplied)

United States v. Giordano, 94 S. Ct. 1820 (1974), considered the language of §2516 (1) in great detail. The Supreme Court, in finding that §2516 (1), fairly read, was intended to limit the power to authorize wiretap applications to the Attorney General himself and to any Assistant Attorney General he might designate concluded that "[t]his interpretation of the statute is also strongly supported by its purpose and legislative history." (94 S. Ct. at 1825). As was so clearly discerned by the Fifth Circuit in United States v. Robinson, supra, the Supreme Court quoted the following from S. Rep. No. 1097, 90th Cong., 2nd Sess., 96-07 (1968):

> "Section 2516 of the new chapter authorizes the interception of particular wire or oral communications under court order pursuant to the authorization of the appropriate Federal, State, or local prosecuting officer. Paragraph (1) ... centralizes in a publicly responsible official subject to the political process the formulation of law enforcement policy on the use of electronic surveillance techniques. Centralization will avoid the possibility that divergent practices might develop." (emphasis added)

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The Supreme Court then commented:

> "This report is particularly significant in that it not only recognizes that the authority to apply for court orders is to be narrowly confined but also declares that it is to be limited to those responsible to the political process, a category to which the Executive Assistant to the Attorney General obviously does not belong." 94 S. Ct. at 1829. (emphasis added)

Although the purpose and legislative history of §2516 (1) is being presented, it is opportune to observe that an Acting Assistant Attorney General is an individual, just like the Executive Assistant to the Attorney General, who is not included within the category of those who are responsive to the political process. Even though one be designated an Acting Assistant Attorney General, the inescapable fact remains that such individual, having not been nominated by the President and confirmed by the Senate, patently fails to satisfy the norm mandated by Congress, and clearly recognized by the Supreme Court, which would qualify him to authorize wiretap applications.

The legislative history of the Act further indicates that a predecessor bill provided that the "Attorney General or any officer of the Department of Justice or any United States Attorney specially designated by the Attorney General, may authorize ..." United States v. Giordano, supra, at 1827. Later, this authority was substantially narrowed so that the Attorney General could delegate his authority only to an Assistant Attorney General. Id. Under the originally proposed language, an Acting Assistant Attorney General as well as the Executive Assistant to the Attorney General could have been empowered to authorize applications for intercept orders. Id. But, as the Supreme Court recognized, Senate Report No. 1097, cited above:

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> "[I]s particularly significant in that it not only recognizes that the authority to apply for court orders is to be narrowly confined but also declares that it is to be limited to those responsive to the political process, a category to which the Executive Assistant to the Attorney General obviously does not belong." Id. 1829

The Executive Assistant to the Attorney General is not responsive to the political process because he is not appointed by the President by and with the advice and consent of the Senate. Id. 1829, N. 9. Because he is not confirmed by the Senate either, the Acting Assistant Attorney General is likewise not responsive to the political process.

Responsibility after the fact, such as would occur in the tedious and rarely used impeachment proceeding, as opposed to the prior examination and approval of Senate confirmation, is obviously not the kind of public responsibility Congress had in mind when enacting Section 2516. Analogously, the Supreme Court noted in Giordano that Congres wanted the authorization in 2516 to occur before (Emphasis Courts) the application is presented to a federal judge because:

> "It will ill serve the Congressional policy of having the Attorney General or one of his Assistants screening the applications prior to their submission to court to have the screening process occur after the application is made and after investigative officials have already begun to intercept wire or oral communications ..." United States v. Giordano, at 1830, N. 2

It would likewise ill serve Congressional policy to screen the authorizing official after the authorizations have been granted and interceptions completed.

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The importance of the Senate's right to review appointments was noted in Williams v. Phillips, 360 F Supp 1363, 1367, D.C. 1973, where the Court, in overruling jurisdictional challenges by the defendant, said that the inquiry to the plaintiffs was aggravated "because the Acting Director is performing the duties of the Director without the advice and consent which the plaintiffs would have been able to assert over an individual whose name had been submitted to the Senate for confirmation." Id. at 1366.

Alexander Hamilton first pointed out the reason for the confirmation process in The Federalist No. 76:

> "To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view of popularity. In addition to this it would be an efficacious source of stability in the administration."

The wounds our country has suffered as a result of the Watergate affair are recent reminders of the dangers of unchecked executive power and the wisdom of the confirmation process.

Because impeachment cannot occur until after the injury has been suffered and the Senate prejudiced, it is not a satisfactory substitute for the public accountability of the confirmation process.

Even if impeachment satisfied the Congressional demand for responsibility, it would not avail the Government here because only "officers" of the United

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States are subject to impeachment, Art. II, Section 4, United States Constitution, and in order to be an officer, a person must first be confirmed by the Senate. Williams v. Phillips, supra.

Significantly, after its detailed scrutiny of §2516 (1), the Supreme Court crystallized its interpretation of this section in this language:

> "To us, it appears wholly at odds with the scheme and history of the Act to construe §2516 to permit the Attorney General to delegate his authority at will, whether it be to his Executive Assistant or to any officer in the Department other than an Assistant Attorney General." 94 S. Ct. at 1830.

United States v. Chavez, 94 S. Ct. 1849 (1974), decided by the Supreme Court on the same day as United States v. Giordano, supra, reaffirms Giordano's construction of §2516 (1). In this respect the Court stated:

> "As is more fully described in Giordano, Title III limits who, among federal officials, may approve submission of a wiretap application to the appropriate District Court, to the Attorney General or an Assistant Attorney General he specially designates..."
> 94 S. Ct. at 1851

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The decisions in United States v. Giordano, supra, and United States v. Chavez, supra, confirm that a "publicly responsible official subject to the political process" means an officer who is appointed by the President and confirmed by the Senate. A fortiori, as previously argued, an Acting Assistant Attorney General who is an individual not appointed by the President and confirmed by the Senate, clearly is not a "publicly responsible official subject to the political process" and is not a person possessed with the requisite statutory authority to authorize wiretap applications.

> "In U. S. v. Giordano ... the Supreme Court held that only the Attorney General and the nine assistant attorneys general who were 'responsive to the political process ...' could authorize wiretaps under Sec. 2516 (1). 416 U.S. at 520 citing S. Rep. No. 1097, 90th Cong., 2nd Sess. 96-97 (1968), 2 U.S. Code Cong. and Admin. News 2185 (1968). 'Political responsiveness' in the Court's view, was achieved by presidential appointment and Senate confirmation, 416 U.S. at 520 n.9. In Giordano, improper authorization by the attorney general's executive assistant rendered the interception unlawful and subject to suppression under Sec. 2518 (10) (a) (i). According to the Court, Congress sought to restrict the use of electronic surveillance by restricting the power to authorize wiretaps to a small group of senior Justice Department officials. Violations of the significant provision, therefore, were sufficient to warrant suppression.
>
> In the present case, the government argues that an acting assistant attorney general is not the same as the attorney general's executive assistant. Although for other purposes this may be true, we cannot agree in this context. Congress has created a very narrow and specific authorization power. An acting assistant attorney general is not mentioned in the statute. Neither does an acting assistant attorney general meet the

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Supreme Court's test of political responsiveness. As such, an acting assistant attorney general who has not been appointed by the President and confirmed by the Senate, may not be designated specially to authorize wiretaps under Sec. 2516 (1)."

United States v. Acon,
CA3, 1975, 17 CrL 2004.

3. MR. HENRY E. PETERSEN NOT A BONA FIDE ACTING ASSISTANT ATTORNEY GENERAL.

Although apparently "acting" as the Assistant Attorney General in Charge of the Criminal Division of the United States Department of Justice and performing the functions of that office at the time of this application for, and interception order, Mr. Petersen did so without statutory authority. Mr. Petersen's right to hold the Office of Acting Assistant Attorney General was, and is determined by the Vacancies Act of 1868, as amended, 5 U.S.C. §§3345-3349. That Act applies to the Executive and military departments, the former encompassing the eleven Cabinet Departments, which include the Justice Department, and provides that a vacancy in those departments due to resignation may be filled temporarily for not more than thirty (30) days. Mr. Petersen's authority would have expired thirty days after Mr. Will Wilson's resignation on October 15, 1971. On November 29, 1971, and December 1, 1971 (dates of application and order), by the explicit provisions of 5 U.S.C. §3348, Mr. Petersen lacked any statutory authority to perform any functions of the Office of Assistant Attorney General of the United States. On January 11, 1972, Mr. Petersen received a recess appointment from the President as (Acting) Assistant Attorney General. If Mr. Petersen's occupancy of that office was not infirm, no reason is perceived for the recess appoint. Therefore, even assuming arguendo that an acting assisant attorney general may be designated specially to authorize wiretaps, in the instant case one who was not even an acting assistant attorney general authorized the subject wiretaps.

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4. THE CHAVEZ AND GIORDANO DECISIONS.

In neither United States v. Chavez, supra, nor United States v. Giordano, supra, did our Supreme Court consider the legal issue now presented to this court. In Chavez the particular question adjudicated was, once it is established that the Attorney General in fact authorized a wiretap application, suppression shall not be ordered when the wiretap application and interception order incorrectly identify the authorizing official as an Assistant Attorney General (one, however, holding such office by Presidential appointment and Senate confirmation). This principle, as enunciated in Chavez, is frequently couched in language to the effect that the misidentification of the authorizing official (provided he be one of those individuals designated by Congress to grant wiretap applications) does not require suppression when the Attorney General himself is shown to have actually authorized the application. This Chavez issue, although often misunderstood by many, is not the question under consideration in this case.

The Chavez and Giordano cases involved separate, independent issues. In Chavez it was claimed that the application and order failed to comply with §2518 (1) (a) and (4) (d), for which reason suppression should be granted under §2518 (10) (a) (i) and §2518 (10) (a) (ii). The respondents claimed communications were "unlawfully intercepted" (§2518 (10) (a) (i)) and that the interception order was "insufficient on its face" (§2518 (10) (a) (ii). In rejecting the latter contention (§2518 (10) (a) (ii), the Supreme Court explicitly found that the interception order was not facially insufficient because:

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"Here, the interception order clearly identified 'on its face' Assistant Attorney General Wilson as the person who authorized the application to be made. Under §2516 (1) he properly could give such approval had he been specially designated to do so by the Attorney General as the order recited. That this has subsequently been shown to be incorrect does not detract from the facial sufficiency of the order." (94 S. Ct. at 1855 -- emphasis added)

The converse of that rule is equally applicable. Regardless of the legality of the approval in other respects not shown by the application or the order itself, suppression is mandated when the application and interception order "on their face" recite and identify an individual as the authorizing official who does not possess the requisite statutory authority to authorize wiretap applications.

Suppression of evidence obtained by the interception order challenged is mandated by §2518 (10) (a) (ii). As so astutely analyzed in Giordano, it is not necessary for suppression under §2518 (10) (a) (ii) that the error challenged must directly and substantially affect the statutory provisions limiting the use of electronic surveillance procedures as may be required under §2518 (10) (a) (i). The Supreme Court, without any equivocation whatever, found that "paragraphs (ii) and (iii) must be deemed to provide suppression for failure to observe some statutory requirements that would not render interceptions unlawful under paragraph (i)." United States v. Giordano, 94 S. Ct. at 1832.

An interception order which identifies an individual as the authorizing official who lacks the statutory authority to authorize wiretap applications is fatally violative of §2518 (10) (a) (ii). Accordingly, suppression of the contents of the communications obtained from the wiretaps so approved is mandated under §2515. The magnitude of the effect of suppressing the unlawfully

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obtained evidence does not vitiate this Court's duty to enforce the Congressional plan as enacted. To quote Mr. Justice Douglas' dissent in United States v. Chavez, 94 S. Ct. at 1867, "[t]he failure of a prosecution in a particular case pales in comparison with the duty of this Court to nourish and enhance respect for the evenhanded application of the law."

With profound respect for this Court, we suggest that any holding contrary to these views would be completely repugnant to the legal principles enunciated by our Supreme Court in Giordano and Chavez, both of which cases are authorities which support the proposition that §2518 (10) (a) (ii) requires suppression in this cause.

B. THE CONTENTS OF THE INTERCEPTED WIRE COMMUNICATIONS, AND EVIDENCE DERIVED THEREFROM, MUST BE SUPPRESSED IN THAT THE INTERCEPTION APPLICATION DID NOT ADEQUATELY SHOW WHY TRADITIONAL INVESTIGATIVE TECHNIQUES WERE NOT SUFFICIENT, IN VIOLATION OF 18 USC §2518 (1) (c).

18 USC §2518 provides,

> "(1) Each application for an order authorizing or approving the intereception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall take the applicant's authority to make such application. Each application shall include the following information:
> ...
> (c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;"

In seeking the subject wire interception, the government attempted to fulfill the requirements of 18 USC §2518 (1) (c) through an affidavit made by F.B.I. Agent Steinke, the relevant portion of that affidavit, which is contained in the court file, is attached hereto as Exhibit A.

In U.S. v. Kalustian, CA 9, 1975, 17 Cr L 2418; modified 18 Cr L 2411, the United States Court of Appeals for the Ninth Circuit reviewed an affidavit substantively identical to the above affidavit to determine if it satisfied 18 USC §2518 (1) (c) and held,

"Within our prescribed limits, however, the utmost scrutiny must be exercised to determine whether wiretap orders conform to Title III. The Act has been declared constitutional only because of its precise requirements and its provisions for close judicial scrutiny. U.S. v. Bobo, 477 F. 2d 974 (4th Cir. 1973); U.S. v. Cox, 449 F. 2d 679 (10th Cir. 1971), cert. denied, 406 U.S. 934 (1972); U.S. v. Cox, 462 F. 2d 1293 (8th Cir. 1972). Our review of wiretap orders must ensure that the issuing magistrate properly performed his function and did not 'serve merely as a rubber stamp for the police.' [U.S. v.] Ventresca, [380 U.S. 102] at 109.

The affidavits set forth facts from which probable cause to infer the operation of a gambling could be gleaned. Nearly all of these 'facts' trickles into the ears of FBI agents through a series of professional gamblers and bookmakers moonlighting as stoolies for the Government. This colorful procedure of shuffling through stacks of hearsay and double hearsay reports from the 'underworld' to construct an affidavit prompts some intriguing ethical questions. Unfortunately, as the affidavits attest, none of the Government's underworld journalists are quite willing to testify. Evidence of the telephone numbers used by the bookmaking operation and the identities of some of the conspirators could not successfully support a prosecution without that testimony.

Consequently the investigating officials decided electronic surveillance was imperative. They discarded alternative means of further investigation because 'knowledge and experience' in investigating other gambling cases convinced them that 'normal investigative procedures' were unlikely to succeed. Agent Brent recites that searches are often fruitless because gamblers keep no records, destroy them, or maintain them in undecipherable codes. Use of the phone company's records alone is inconclusive.

The affidavit does not enlighten us as to why this gambling case presented any investigative problems which were distinguishable in nature or degree from any other gambling case. In effect the Government's position is that all gambling conspiracies are tough to crack, so

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> the Government need show only the probability that illegal gambling is afoot to justify electronic surveillance. Title III does not support that view. 'Congress legislated in considerable detail in providing for applications and orders authorizing w. e tapping and evinced the clear intent to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must state that and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.' U.S. v. Giordano 416 U.S. 505, 15 CrL 3033. The Government's position is further undermined by the activity of other crime-fighting organizations. California, among other states, deprives its policemen of electronic surveillance in all cases. This has not prevented them from successfully prosecuting gambling crimes...
>
> The Government failed in this case to satisfy 18 U.S.C. Sec. 2518 (1) (c). Its application did not adequately show why traditional investigative techniques were not sufficient in this particular case."

The full opinion of U.S. v. Kalustian, as reported in 17 CrL 2428, 2419, and as modified in 18 CrL 2411, is attached hereto as Exhibit B. A copy of relevant portion of the affidavit reviewed in U.S. v. Kalustian shall be hereinafter forwarded to the court to be attached hereto as Exhibit C.

It is respectfully submitted that, as in U.S. v. Kalustian, the subject application did not adequately show why traditional investigative techniques were not sufficient, as required by 18 USC §2518 (1) (c) and all contents of the intercepted wire communications, and evidence derived therefrom, must be suppressed.

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C. THE CONTENTS OF THE INTERCEPTED WIRE COMMUNICATIONS, AND EVIDENCE DERIVED THEREFROM, MUST BE SUPPRESSED IN THAT THE JUSTICE DEPARTMENT MADE IMPROPER DISCLOSURE OF THE CONTENTS OF THE WIRE INTERCEPTIONS IN VIOLATION OF 18 USC §§2511, 2517.

18 USC Section 2511 prohibits any willful use of an interception "except as otherwise specifically provided in this chapter". U.S. v. Eastman, No's 71-1643 and 71-1644, 3rd C. 1972. Section 2517 is an exception to Section 2511 and permits disclosure only in limited and specific circumstances. Subsection (1) permits disclosure from one investigative or law enforcement officer to another investigative or law enforcement officer to the extent appropriate to the proper performance of the official duties of either officer. Subsection (2) permits an investigative or law enforcement officer to use the contents of intercepted communications or evidence derived therefrom to the extent it is appropriate to the proper performance of his official duties. According to the legislative history this provision envisions the use in establishing probable cause for arrest, probable cause to search, or to develop witnesses. U. S. Code Cong. and Adm. News Vol. 2, 1968, p. 2188. Subsection (3) as amended provides that any person who has received by any means authorized by this Chapter [119] any information through the interception of wire or oral communications may disclose the contents while giving testimony under oath in any proceeding held under the authority of the U. S. or any State or political subdivision thereof.

While the obvious intent of the Amendment to 2517 (3) was to permit the use of intercepted communications or evidence derived therefrom in civil as well as criminal proceedings, it is important to note that subsection (3) was the only part of Paragraph 2517 amended and that only part of the subsection

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was amended. Even with the amendment only authorized persons are permitted to receive or disclose wiretap evidence.

Because the disclosures complained of here were not made in a proceeding while giving testimony under oath, subsection (3) lends them no support. Therefore if there is any authorization for these disclosures it must be found in subsections (1) or (2).

To understand the extent of the exceptions granted by Paragraph 2517 it is necessary to begin with the definition of "investigative or law enforcement officer" contained in Paragraph 2510 (7).

> "Investigative or law enforcement officer means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this Chapter, and any Attorney authorized by law to prosecute or participate in the prosecution of such offenses."

Those offenses referred to are specifically enumerated by title and section number in 18 USC §2516 (1). Nowhere in that section is any violation of the Internal Revenue laws, Title 26 United States Code, listed. The great specificity with which 18 USC §2516 (1) catalogues those offenses for which wiretap authorization may be granted would seem to indicate a clear Congressional intent not to permit the disclosure of the contents of intercepted wire communications for use in investigating or processing revenue law violations. See James v. McKeever, 73-2 USTC 82, 779 (D.C. Ariz. 1973) Federal Excise Tax Reports 16, 119

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The only persons who have any authority to investigate any criminal matters in the Internal Revenue Service are the special agents in the Intelligence Division. However, even they have no authority to investigate or arrest any individuals for any of the offenses enumerated in Paragraph 2516. Their official functions are as follows:

> "The Intelligence Division enforces the criminal statutes applicable to income, estate, gift, employment and excise tax laws (except those relating to alcohol, tobacco, narcotics and certain firearms) by developing information concerning alleged criminal violations thereof, evaluating allegations and indications of such violations to determine investigations to be undertaken, investigating suspected criminal violations of such laws, recommending prosecution when warranted, and measuring effectiveness of the investigation and prosecution processes. The Division assists other Intelligence offices in special inquiries, drives and compliance programs and in normal enforcement programs, including those combatting organized wagering, racketeering and other illegal activity, by providing investigative resources upon regional or national office request. It also assists U. S. Attorneys and Regional Counsel, in the processing of Intelligence cases, including the preparation for and trial of cases." CCH Stand. Fed. Tax Report, Section 5988:1118.6"

While it appears that the Intelligence Division does have some investigatory authority in the area of organized wagering, that limited authority does not bring the special agent within the ambit of Section 2516's enumerated offenses. The more logical interpretation of this investigative authority is that it was given during the period criminal penalties were attached to the excise tax laws and gambling stamp law and was restricted to those areas. Read in its entirety the description reflects an intention to invoke the assistance of the Intelligence Agent only in those areas where the criminal tax laws merged with those criminal laws proscribing "organized criminal activity" or racketeering". Those overlapping areas were eliminated, and, along with them the special agents investigative authority by the decisions in Grosso v. U.S., 390 US 62, and Marchetti v. U.S., 390 US 39.

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Assuming arguendo that special agents in the Intelligence Division do qualify as investigative or law enforcement officers the statute would still be violated by disclosing the evidence indiscriminately to individuals outside that Division.

For instance, the information was provided to P.C. Dillon of the Audit Division. Section 5988:1118.4 of Vol. 6 CCH Standard Federal Tax Reports sets forth the functions of the Audit Division of the Internal Revenue Service. Clearly within such descriptions there is nothing which gives anyone within the audit division power to conduct investigations of or to make arrests for offenses enumerated in 18 USC §2516 (1).

Having established that the disclosures made to the Internal Revenue Service Agents were unauthorized and in violation of Title III, the question to be determined is what sanctions should be applied.

It is recognized that in Section 2511 (1) (c) the Act provides criminal penalties for an unauthorized disclosure and in Section 2520 allows for the recovery of civil damages for such disclosure, but it is submitted that these sanctions were intended to supplement the exclusionary sanction of Section 2515 as effected through Section 2518, and not to supplant it.

This conclusion is mandated by an analysis of our historical experience that civil and criminal penalties are not effective deterrents against governmental abuse of the search and seizure privilege. See Lee v. Florida, 392 US 378, Elkins v. U.S., 364 US 206, and Mapp v. Ohio, 367 US 643.

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In the Lee case the Supreme Court recognized the futility of relying on civil and criminal penalties to enforce the proscription against wiretapping contained in 47 USC 605. Lee overruled Schwartz v. Texas, 344 US 199, which had permitted evidence seized in violation of Section 605 to be admitted in a State Court although prohibited in a Federal Court. The Court said in part:

> "Finally our decision today is counseled by experience. The hope was expressed in Schwartz v. Texas that '[e]nforcement of the statutory prohibition in Section 605 can be achieved under the penal provisions of the Communications Act, 344 US at 201 (Cf Wolf v. Colorado, 338 US 25 at 30, 31). That has proved to be a vain hope. Research has failed to uncover a single reported prosecution of a law enforcement officer for violation of Section 605 since the statute was enacted. We conclude, as we concluded in Elkins and in Mapp, that nothing short of mandatory exclusion of the illegal evidence will compel respect for the federal law' in the only effectively available way--by removing the incentive to disregard it."
> Elkins v. U.S. 364 US at 217

As a result of the Supreme Court's rulings in Katz v. U.S., 389 US 347, and Berger v. New York, 388 US 41, Congress was sensitive to the necessity for restraint in the employment of wire taps and cognizant of the possibilities of abuse inherent in such a secret search.

To allay the Supreme Court's profound concern over these matters Title III lay down a stringent step by step procedure that circumscribes and limits all electronic surveillance. To enforce those stringent requirements Congress adopted civil and criminal penalties in addition to an exclusionary sanction, and in Sections 2516 and 2518 guaranteed that the "lines of responsibility" would lead to a readily identifiable public official whom they could directly sanction. U.S. v. Bassoline, No. 46323, E.D. Mich., ____F. Supp ____ 1972.

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Congressional intent will be effectively thwarted, however, if suppression is not ordered for such unauthorized disclosures, because the criminal and civil penalties are not effective deterrents. Only a sanction that removes the incentive to violate the law is likely to guarantee obedience of that law.

If the government is permitted to do as it pleases with the intercepted communications without jeopardizing the criminal proceeding which was the basis for the Court Order in the first instance, secure in the knowledge that civil and criminal penalties are ineffective and rarely, if ever, successfully invoked, the only thing left of the statutory scheme designed to protect the individual from potential governmental abuse would be the assurances of government officials themselves.

Unfortunately the instant case is not an isolated example of governmental abuse of wiretaps. A striking example of such misuse is reported in 118 U. Pa. L. Rev. 169, 190:

> "An agent of the Federal Bureau of Investigation recently acknowledged under oath that the Bureau had conducted an extended surveillance of the late Dr. Martin Luther King. It has also been reported by columnist Carl T. Rowan, former head of the U. S. Information Agency, that during his period of government service he saw summaries of recorded conversations resulting from a surveillance of Dr. King; that these summaries contained derogatory information concerning the subjects' sex life; and that the Director of the F.B.I., in pursuit of his own purposes, divulged this information to various persons, including favored journalists and selected members of Congress. In considering this example—involving the agency which enjoys the best reputation for probity among our police organizations—one should bear in mind that if eavesdropping is sanctioned, it will be practiced not only by federal investigators, but also in state and municipality, town and county."

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As shocking as the foregoing illustration is the government's action in the instant matter is even more distressing. Here defendants are not facing the intangible stain of prejudice incurred by an unauthorized disclosure to the media, but the very real loss of all their worldly possessions.

In the case of leaks to the press or other media, which disclosures would be condoned if suppression herein is not ordered, the victim of an unauthorized disclosure may and usually will be without any remedy because of his inability to identify the responsible party.

A dramatic illustration of this type disclosure appears in U.S . v. Robinson, 468 F2d 189, (CA 5 1972)

> "The instant procedure offers dramatic proof that the hazard to privacy which Congress sought to protect with its restrictions was substantial. One of the telephone conversations monitored and recorded pursuant to this very wiretap order was between a married defendant and his paramour. It contained lascivious passages of the most intimate nature. A transcription of this entire exchange was made and filed with the Court, as required by 18 USCA Section 2518 (8) (a). At oral argument it was conceded by the government that an unauthorized disclosure of this salacious record had somehow occurred, with the result that the matter received notoriety through a magazine circulating in the community."

A disclosure that "somehow had occurred" is not one that permits the civil or criminal penalties of the statute to be invoked because the responsible party is not identified. The victim of such a disclosure, although humiliated and disgraced in the public eye, is without a remedy to enforce his rights if the underlying criminal proceeding which was the basis for the Court Order in the first instance is unaffected.

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To fail to suppress for such unauthorized disclosure would not only vitiate Congress' attempts to secure the citizens right to privacy, but would also affect the very fabric of our government.

When these unlawful acts occur, i.e., the unauthorized disclosure of the intercepted communications, they were the crimes of the officers individually. The Government was innocent, in legal contemplation; for no federal official is authorized to commit a crime on its behalf. But when the Government, having full knowledge, sought, through the Internal Revenue Service, to avail itself of the fruits of the acts in order to accomplish its own ends, it assumed moral responsibility for the officers crimes. And if this Court should permit the Government, by means of its officers' crimes, to effect its purpose of punishing and harrassing the defendants, there would seem to be present all the elements of a ratification. If so, the Government itself would become a lawbreaker.

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously, Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy..."

In any event, suppression must be ordered in that disclosure of the contents of the interceptions to the Internal Revenue Service as aforesaid was not in conformity with the order of authorization or approval.

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18 USC §2515 provides that no part of the contents of any wire or oral communication, and no evidence derived therefrom, may be received at certain proceedings, including trials, "if the disclosure of that information would be in violation of this chapter." United States v. Giordano, supra, at 1831. 18 USC §2518 (10) (a) (iii) provides for suppression of evidence on the ground that "the interception was not in conformity with the order of authorization or approval".

§2518 (10) (a) (ii) and (iii) reach purely statutory defaults without constitutional overtones. A purely statutory "transgression" of (ii) and (iii) warrants suppression. United States v. Giordano, supra, at 1831.

Herein, Judge Blumenfeld's authorization order was entered pursuant to §2518 of Title 18, United States Code, after "full consideration having been given to the matters set forth therein"(emphasis added). Unquestionably, Judge Blumenfeld intended the special agents of the F.B.I. to abide by all the statutory mandates of §2518.

Under Subsection (8) (a) of §2518 it is clear that use or disclosure of the contents of wire communication interceptions must only be in conformity with §2517.

Because the contents of the interceptions in this case were disclosed and used in violation of §2517, all such communications and the evidence derived therefrom should be suppressed in the trial herein.

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CONCLUSION

The lament that granting this motion could conceivably result in the war on organized crime coming to a standstill, if the Attorney General and Assistant in charge of the Criminal Division are "Acting", ignores the fact that all nine Assistant Attorney Generals, and not just the Assistant in charge of the Criminal Division, can be designated to authorize wiretaps. It also reflects a feeling that wiretapping is a right to be freely invoked and not an aid bestowed by legislative grace for use only in exceptional circumstances and in a strictly prescribed manner.

The Government forgets that:

> "Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping and evinced the clear intent to make doubly sure that the statutory authority to be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather the applicant must state and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous..." United States v. Giordano, supra, at 1826, 1827.

It was recognized both by Congress and the Supreme Court that there may well be circumstances in which cases will be lost because of the restrictions imposed by the Act and "that is going to have to be the price we will have to pay". Id. at 1828. The potential problems posed by this legislation were not unanticipated by Congress but, on the contrary, were fully explored and the restrictions imposed were intended to chafe the Government on occasion. "Electronic surveillance was a serious political issue, and these detailed

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Attorney for Angelo Colangelo

Attorney for

Attorney for

Attorney for

Attorney for

Attorney for

Attorney for

Attorney for

Attorney for

Attorney for

Attorney for

CERTIFICATION

This is to certify that a copy of the foregoing has been sent this 5th day of April, 1976, to John R. Tarrant, Esq., United States Department of Justice, Room 1703, United States Post Office and Courthouse, Boston, Massachusetts 02109; Peter R. Casey, III, Esq., Special Attorney, 450 Main Street, Hartford, Connecticut.

Gregory B. Craig

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NEED FOR INTERCEPTION

The interception of communications is necessary to the investigation for the following reasons:

1.) The confidential informants described herein have categorically refused to testify in open court for fear of their safety, even though granted immunity.

2.) Without the testimony of the above-mentioned informants, it would be exceedingly difficult to prove the complete nature of the current gambling operation of ROGER L. SPINELLI, JOHN J. DeLUCIA, NICHOLAS V. LANESE, WILLIAM BALOG and PETER D. CHAPDELAINE.

3.) It is doubtful that a search warrant, if obtained and executed, would result in obtaining gambling records reflecting the complete nature of the gambling operation. From my experience and the experiences of other Agents, I know that gambling raids and searches of gamblers and their gambling establishments have not in the past resulted in the gathering of physical or other evidence to prove all elements of the offenses. I have found through my experience and the experiences of other Special Agents, who have worked gambling cases that if records are maintained, gamblers, immediately prior to or during the physical search, sometimes destroy these records. Additionally, records that have been seized in past gambling cases have generally not been sufficient to establish all of the elements of federal offenses because these records are difficult to interpret and many times are of little or no significance without further knowledge of the gambler's activity.

4.) There are no known witnesses who could be relied upon to truthfully testify to the violation in question.

5.) The premises at 215 Barnum Avenue and 3880 Main Street are multiple apartment dwellings. It is, therefore, impossible, through physical surveillance, to observe the subjects of this investigation operating the telephones. It is also impossible, through physical surveillance, to observe the subjects entering or leaving the aforementioned apartments without detection. Through visual observations, it is merely possible to place the subjects at the

premises where their bookmaking operations are located.

6.) Due to the manner in which the violations are carried out, the interception of wire communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove the commission of this violation.

7.) For reasons set out above, all normal avenues of investigations, except contacts with confidential sources, are closed, and the only feasible way to develop the necessary evidence of a violation of Title 18, United States Code, Section 1955 and Section 371 by ROGER L. SPINELLI, JOHN J. DeLUCIA, NICHOLAS V. LANESE, WILLIAM BALOG, PETER D. CHAPDELAINE and others, is the interception of wire communications from telephone numbers 203-333-1224 and 203-336-5975, listed to SANDRA WEISBERGER, 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut, and telephone number 203-372-5434, listed to JOHN CRISCUOLO, 3580 Main Street, Apartment 46, Bridgeport, Connecticut.

Normal investigative procedures have not been successful and reasonably appear not to succeed if further tried.

proceeding only on one count. The prosecutor then offered this choice to the defense counsel:

[Text] But the prosecutor cannot take the choice offered to him and give it to defense counsel to make in order to put the onus of coming forward on defendants. He cannot force the defense counsel into the position of either themselves asking for the mistrial — which consent would foreclose their appealing the double jeopardy issue — or explicitly agreeing to go to trial on the 21-act count and therefore waiving an appeal on the sufficiency of the indictment. The prosecutor here was offered one choice or the other. He cannot be permitted to insure that the accusation be immunized on appeal by turning the decision over to defendants at his own volition and forcing the defense to come forward and affirmatively accept it or reject it. *[End Text]* — Goldberg, J.

(U.S. v. Alford; CA 5, 7/30/75)

FAILURE TO SHOW INADEQUACY OF OTHER INVESTIGATIVE METHODS UNDOES WIRETAP

Reviewing judge must be given "full and complete" statement of underlying circumstances justifying need for electronic surveillance.

The requirement of 18 USC 2518 (1) (c) that federal law enforcement agents seeking a wiretap make "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous," is not satisfied by allegations that informers will not testify and other investigative methods won't work, the U.S. Court of Appeals for the Ninth Circuit says. Thus, FBI agents who "discarded alternative means of further investigation because 'knowledge and experience' in investigating other gambling cases convinced them that 'normal investigative procedures' were unlikely to succeed," failed to justify the need for a wiretap on a suspected gambling operation.

The court notes that a reviewing judge must have a full and complete statement of the underlying circumstances, and the government must inform him of every technique which is customarily used in police work in investigating the type of crime involved and must explain why each of them has either been unsuccessful or is too dangerous or unlikely to succeed because of the particular circumstances of the case. "Title III and the individual's right to privacy which it seeks to preserve demand no less." (U.S. v. Kalustian, 8/4/75)

Digest of Opinion: The defendants contend that their convictions for illegal gambling were based upon information obtained by a wiretap which was not obtained in compliance with 18 USC 2510 et seq.

The government contends that confidential informers advised FBI agents that the defendant and others were operating a bookmaking operation. In seeking a wiretap on three telephones at the club, and two others at separate locations, the government attempted to fulfill the requirements of 2518 (1) (c) through affidavits supplied by FBI Agent Brent who stated that the informers had all said that they would not testify, even if granted immunity. Further, he claimed that experience has established that even though telephone toll records are available which indicate a person is engaged in illicit gambling, the records themselves are not sufficient to prove gambling activities. Brent further alleged that standard investigative techniques haven't succeeded in providing evidence to sustain prosecution in this case.

Brent further claimed:

[Text] "Based upon my knowledge and experience as a Special Agent of the Federal Bureau of Investigation in the investigation of gambling cases and my association with other Special Agents who have conducted investigation of gambling activities, normal investigative procedures appear to be unlikely to succeed in establishing that the above individuals are involved in gambling activities over the aforementioned telephones in violation of Federal laws. My experience and the experience of other Agents has shown that gambling raids and searches of gamblers and gambling establishments have not, in the past, resulted in the gathering of physical or other evidence to prove all elements of the offense. I have found through my experience and the experience of other Special Agents, who have worked on gambling cases, the gamblers frequently do not keep permanent records. If such records have been maintained, gamblers immediately prior to or during a physical search sometimes destroy the records. Additionally, records that have been seized in past gambling cases have generally not been sufficient to establish elements of Federal offenses because such records are difficult to interpret, and many times are of little or no significance without further knowledge of the gamblers' activities. Therefore, the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violation of these statutes. *[End Text]*

§2518(1)(c) is patterned after traditional search warrant practices.

[Text] Within our prescribed limits, however, the utmost scrutiny must be exercised to determine whether wiretap orders conform to Title III. The Act has been declared constitutional only because of its precise requirements and its provisions for close judicial scrutiny. (U.S. v. Bobo, 477 F.2d 974 (4th Cir. 1973); U.S. v. Cox, 449 F.2d 679 (10th Cir. 1971), cert. denied, 406 U.S. 934 (1972); U.S. v. Cox, 462 F.2d 1293 (8th Cir. 1972). Our review of wiretap orders must ensure that the issuing magistrate properly performed his function and did not "serve merely as a rubber stamp for the police". [U.S. v.] Ventresca, [380 U.S. 102] at 109.

The affidavits set forth facts from which probable cause to infer the operation of a gambling could be gleaned. Nearly all of these "facts" trickled into the ears of FBI agents through a series of professional gamblers and bookmakers moonlighting as stoolies for the Government. This colorful procedure of shuffling through stacks of hearsay and double hearsay reports from the "underworld" to construct an affidavit prompts some intriguing ethical questions. Unfortunately, as the affidavits attest, none of the Government's underworld journalists are quite willing to testify. Evidence of the telephone numbers used by the bookmaking operation and the identities of some of the conspirators could not successfully support a prosecution without that testimony.

Consequently the investigating officials decided electronic surveillance was imperative. They discarded alternative means of further investigation because "knowledge and experience" in investigating other gambling cases convinced them that "normal investigative procedures" were unlikely to succeed. Agent Brent recites that searches are often fruitless because gamblers keep no records, destroy them, or maintain them in undecipherable codes. Use of the phone company's records alone is inconclusive.

The affidavit does not enlighten us as to why this gambling case presented any investigative problems which were distinguishable in nature or degree from any other gambling case. In effect the Government's position is that all gambling conspiracies are tough to crack, so the Government need show only the probability that illegal gambling is afoot to justify electronic surveillance. Title III does not support that view. "Congress legislated in considerable detail in providing for applications and orders authorizing wire tapping and evinced the clear intent to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must state that

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...and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous." U.S. v. Giordano 416 U.S. 505, 94 Ct. 3033. The Government's position is further undermined by the activity of other crime-fighting organizations. California, among other states, deprives its policemen of electronic surveillance in all cases. This has not prevented them from successfully prosecuting gambling crimes.

Obviously electronic surveillance can facilitate criminal investigation. Other investigative techniques are usually slower and more difficult. Unless they "have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous," however, Title III does not allow wiretapping to replace them.

The Government failed in this case to satisfy 18 U.S.C. Sec. 2518 (1)(c). Its application did not adequately show why traditional investigative techniques were not sufficient in this particular case. A reviewing judge is handicapped without a full and complete statement of underlying circumstances. The Government must (1) inform him of every technique which is customarily used in police work in investigating the type of crime involved, and (2) explain why each of them has either been unsuccessful, or is too dangerous or unlikely to succeed because of the particular circumstances of that case. Title III and the individual's right to privacy which it seeks to preserve demand no less.

Mere conclusions by the affiant are insufficient to justify a search warrant, Aguilar v. Texas, 378 U.S. 238, or a wiretap order. More specifically, they do not provide facts from which a detached judge or magistrate can determine whether other alternative investigative procedures exist as a viable alternative.

The trial court's order denying appellants' motions for suppression of electronic surveillance evidence is reversed, and all consolidated cases are remanded for a new trial. All evidence gathered through electronic surveillance pursuant to the original Sec. 2518 order and its extensions shall not be admitted in subsequent proceedings. *[End Text]* —Skopil, J.

(U.S. v. Kalustian, C.A. 9, 8-4-75.)

CA 9 TRIES AGREED STATEMENT OF FACTS AS TRANSCRIPT SUBSTITUTE

Chief Judge: "...results's mixed but encouraging results so far."

Chief Judge Chambers of the U.S. Court of Appeals for the Ninth Circuit offers a progress report on his summer experiment of having counsel in cases where an appellant seeks a trial transcript at government expense spend at least eight hours trying to come up with an agreed statement of facts. In three of the first four cases to report back this device has paid off, he notes. (U.S. v. Schmitz, 8/5/75.)

Opinion [Text] This summer in eight cases where a defendant-appellant sought a transcript here at government expense for use in the district court, I have directed the defense counsel and the United States attorney to spend up to eight hours trying to develop an agreed statement of facts for an appeal.

Of the first four cases to report back, we have the following results:

Case One — an agreed statement of facts.

Case Two — an agreed statement of facts to be supplemented by [illegible] pages of testimony.

Case Three — defense counsel became convinced he had no case for appeal and obtained the client's consent to dismiss. Case dismissed.

Case Four — a clear showing that an agreed statement of facts is not feasible.

In Case Five (this one), a district judge objects to this procedure, saying that defendant isn't entitled to in forma pauperis because the judge thinks the defendant can pay for it. (The judge has filed objections in this court.)

The questions: Free transcript or agreed statement, are not brothers, perhaps only first cousins once removed. An agreed statement would eliminate any argument about who would pay for the transcript. I have a hunch that we may not get an agreed statement here, especially with the district judge opposing it. But if we fail in Case Five (this one), my batting average will drop to .600.

It is still hoped that eight hours of conference will produce an agreed statement. If it does not, I will then consider defendant's ability to pay for the thing, i.e., the transcript.

It is my belief that in 50 percent of the cases where the trial judge regards an appeal as utterly frivolous, an agreed statement is feasible. Of course, this incident will not help my campaign for agreed statements. But the project is worth trying. *[End Text]* —Chambers, C.J.

(U.S. v. Schmitz, C.A. 9, 8-5-75.)

LEGISLATOR'S SELF-DESCRIBED INFLUENCE SELLING WAS HOBBS ACT VIOLATION

Defendant exploited victim's reasonable belief that defendant had de facto power to accomplish desired end

A majority of the en banc U.S. Court of Appeals for the Third Circuit affirms the Hobbs Act, 18 U.S.C. 1951, conviction of a Pennsylvania state senator for obtaining a payment "under color of official right" even though he had no statutory power to perform the service for which he was paid. The victim of the defendant's extortion was attempting to lease part of a building to the state, and departments of the state's executive branch, not the defendant, have de jure power to decide whether to rent such properties. But the victim had ample reason to believe that the defendant enjoyed de facto power in this area, the majority says, and the defendant's exploitation of this belief constituted a violation of the Act.

The majority also reaffirms its holding in U.S. v. Kenny, 462 F.2d 1203, that in a prosecution for extortion "under color of official right," no coercion of the victim need be shown. Finally, although the victim was a company which itself did no interstate business, the majority discerns a factual nexus with interstate commerce sufficient to support federal jurisdiction and Hobbs Act coverage. The company's subsidiaries did a substantial interstate business, the majority points out, and the depletion of the parent company's assets by the amount of the extortion payments impaired its ability to conduct this interstate commerce.

Judge Gibbons, with whom Judge Aldisert joins, does not agree that the defendant's conduct amounted to a Hobbs Act violation. The defendant obtained the leases for the victim through his influence, the dissenters maintain, not his office; while such influence peddling is reprehensible, Congress has not seen fit to make it a federal crime. (U.S. v. Mazzei, 7/29/75.)

Digest of Opinion Defendant Mazzei, a Pennsylvania State Senator, was convicted on two counts of extortion in violation of the Hobbs Act. The victim of the alleged extortion was B.M.I., Inc., a holding company of 16 subsidiaries engaged in interstate business. B.M.I. was anxious to lease unused space in its headquarters building and was put in contact with the defendant who, as a legislator, had no statutory power with respect to state leasing practices. However, Mazzei discussed leases with Kelly, a B.M.I. officer, and later informed him that "it was the

CA 9 MODIFIES OPINION ON TITLE III's "ALTERNATIVE MEANS" REQUIREMENT

Court drops its requirement that particular police investigative techniques be discussed in detail

The U.S. Court of Appeals for the Ninth Circuit modifies an earlier opinion, 17 CrL 2428, holding that federal agents seeking authorization for a wiretap failed to satisfy the conditions of 18 USC 2518(1)(c). That subsection requires a statement that alternative investigatory methods have been tried and found wanting, or an explanation of why such methods would be dangerous or unsuccessful. The court does not disturb the result in this case, but its new opinion omits the following sentence: "The Government must (1) inform him [the judge] of every technique which is customarily used in police work in investigating the type of crime involved and (2) explain why each of them have either been unsuccessful or is too dangerous or is unlikely to succeed because of the particular circumstances of that case." The modified opinion refers instead to "a full and complete statement of underlying circumstances."

The paragraphs below replace the fourth- and third-from-the-last paragraphs of the prior opinion, 17 CrL at 2429. (U.S. v. Kalustian, modified 12/11/75)

Modification: [Text] Obviously electronic surveillance can facilitate criminal investigation. Because other investigative techniques are usually slower and more difficult, Congress did not require exhaustion of "all possible" investigative techniques before orders for wiretaps could be issued. U.S.A. v. Smith (9th Cir., July 2, 1974). But Title III does not allow wiretapping to replace such other techniques unless they "have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous."

The Government failed in this case to satisfy 18 U.S.C. Sec. 2518 (1)(c). Its application did not adequately show why traditional investigative techniques were not sufficient in this particular case. A judge reviewing a wiretap application is handicapped without such a showing. Title III and the individual's right to privacy, which it seeks to preserve, demand no less than a full and complete statement of underlying circumstances. *[End Text]* —Skopil, J.

(U.S. v. Kalustian; CA 9, modified 12/11/75)

OBJECTIVE ACTS MUST INDICATE CRIMINALITY FOR ATTEMPT CONVICTION

Acts themselves, without reliance on mens rea, must indicate that defendant's conduct is criminal

Grappling with the dichotomy between mere preparation and criminal attempt and the doctrines of factual and legal impossibility, the U.S. Court of Appeals for the Fifth Circuit arrives at what it believes is a reasonable test for evaluating attempt convictions raising these issues. "[W]e demand that in order for a defendant to be guilty of a criminal attempt, the objective acts performed, without any reliance on the accompanying mens rea, mark the defendant's conduct as criminal in nature. The acts should be unique rather than so commonplace that they are engaged in by persons not in violation of the law."

Its new test firmly in hand, the court reverses the attempt conviction of a defendant who sold undercover agents a substance he thought was heroin but was in reality was a heroin-related uncontrolled substance. Because the substance sold was not heroin, the court cannot conclude that the defendant's objective acts, apart from any direct or indirect evidence of his intent, indicate that his conduct was criminal. (U.S. v. Oviedo, 1/12/76)

Digest of Opinion: [Text] The facts before us are * * * simple — Oviedo sold a substance he thought to be heroin which in reality was an uncontrolled substance. The legal question before us is likewise simple — are these combined acts and intent cognizable as a criminal attempt under 21 U.S.C.A. Sec. 846. The answer, however, is not so simple.

Oviedo and the government both agree the resolution of this case rests in an analysis of the doctrines of legal and factual impossibility as defenses to a criminal attempt. Legal impossibility occurs when the actions which the defendant performs or sets in motion, even if fully carried out as he desires, would not constitute a crime. U.S. v. Conway, 5 Cir. 1975, 507 F.2d 1047. Factual impossibility occurs when the objective of the defendant is proscribed by the criminal law but a circumstance unknown to the actor prevents him from bringing about that objective. Id. at 1050. The traditional analysis recognizes legal impossibility as a valid defense, but refuses to so recognize factual impossibility. * * *

These definitions are not particularly helpful here, for they do nothing more than provide a different focus for the analysis. In one sense, the impossibility involved here might be deemed legal, for those acts which Oviedo set in motion, the transfer of the substance in his possession, were not a crime. In another sense, the impossibility is factual, for the objective of Oviedo, the sale of heroin, was proscribed by law, and failed only because of a circumstance unknown to Oviedo.

Although this issue has been the subject of numerous legal commentaries, federal cases reaching this question are few, and no consensus can be found. *[End Text]*

In U.S. v. Roman, 356 F.Supp. 434, affirmed, CA 2 1973, 484 F.2d 1271, the defendants were transporting a suitcase containing heroin. Though the aid of an informer and unknown to the defendants, the contents of the suitcase were replaced with soap powder. The defendants were arrested when they attempted to sell the contents of the suitcase and were subsequently charged with attempted possession with intent to distribute. The court concluded that since the objective acts of the defendants were criminal factual impossibility would not be recognized as a defense. In U.S. v. Berrigan, 482 F.2d 171, 13 CrL 2361 (CA 3 1973), the defendants were charged with attempting to violate 18 USC 1791 which prohibits the smuggling of objects into or out of a federal prison. Since the evidence established that the warden had knowledge of the smuggling plan, and since lack of knowledge was a necessary element of the offense, the court held that the warden's knowledge precluded any conviction for attempt since attempting to do that which is not a crime is not attempting to commit a crime.

[Text] Applying Roman, we would not concern ourselves with any theoretical distinction between legal and factual impossibility, but would affirm the conviction, since the objective of Oviedo's is criminal. Applying Berrigan we would look solely to the physical act which Oviedo "intended", the transfer of the procaine in his possession, and we would conclude that since the transfer of procaine is not criminal, no offense is stated. The choice is between punishing criminal intent without regard to objective acts, and punishing objective acts, regarding intent as immaterial.

In our view, both Roman and Berrigan miss the mark, but in opposite directions. A strict application of the Berrigan approach would eliminate any distinction between factual and legal impossibility, and such impossibility would always be a valid defense, since the "intended" physical acts are never criminal. The Roman approach turns the attempt statute into a new substantive criminal statute where the critical element to be proved is mens rea simpliciter. It would allow us to punish one's thoughts, desires, or motives, through indirect evidence, without reference to any objective fact. See Berrigan, supra at 189, fn 39. The danger is evident.

A: No, I did not. I [illegible]
of that." (T.261, Exhibit 37.)

c. Sol Lindenbaum [illegible] 1969, [illegible] Wilson letters were being submitted to [illegible] for supplying for wiretaps, but no one told him Wilson was not signing the letters:

"Q: Did you know Mr. Wilson was not signing these letters?

A: No." (T.262, Exhibit 37.)

d. Will Wilson did not know Lindenbaum had authorized wiretaps:

"Q: You did not know, did you, sir, while you were with the Department, as [illegible] until sometime in June 1971, that Mr. Lindenbaum on occasion had authorized wiretaps?

A: I didn't know that at all. I don't know it now." (T.261, Exhibit 37.)

Wilson left the Justice Department in October of 1971.

e. It was not until September of 1971 that Henry Petersen, Mitchell's deputy in the Criminal Division, learned Sol Lindenbaum was signing Attorney General John Mitchell's initials to the authorizing memoranda (T.155, Exhibit 32).

And,

"Q: You didn't even know that Lindenbaum actually was authorized, did you?

A: Apparently not." (T.209, Exhibit 33.)

f. Petersen apparently was acting under the impression that Will Wilson had been specially designated by the Attorney General under Section 2516(1). He since has been informed that Mitchell considered Wilson's signing to be a "ministerial act." (T.109, Exhibit 34.)

Respectfully submitted,

Attorney for Arthur Sauberfield

Attorney for Morris Klotz

Received a copy of the foregoing Complaint this

_____ day of _____, 1977.

James R. Thompson, Esq.
Attorney for the Northern District
of Illinois

By: _____

GEORGETOWN UNIVERSITY
WASHINGTON, D.C. 20007
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LABORATORY REPORT

November 25, 1974

Mr. James E. McLaughlin
Attorney at Law
McArdle, McLaughlin, Paletta & McVay
Frick Building
Pittsburgh, Penna. 15219

Re: U. S. v. Iannelli

Dear Mr. McLaughlin:

The evidence listed below was delivered to the laboratory by you personally on October 1, 1974.

Listing of Evidence:

Specimen #	Description
Qc1	Photocopy of United States Government Memorandum; Department of Justice; dated: "OCT 14 1970;" To: Will Wilson; From: John N. Mitchel'; Subject: Interception Order Authorization; concerning Robert E. Iannelli, et al.

Also Submitted with Qc1 above: Ten photocopies of as many U. S. Memoranda described as bearing "Good" sets of initials by Mitchell: one dated November 27, 1970, concerning Alvin Hurst; one dated, "MAR 3 1971," concerning John Bazzano, et al; one dated "MAR 24 1971," concerning John Bazzano, et al; one dated "MAY 6 1971," concerning "Jeannie" Kosh, et al; one dated,

(Continued on Page Two)

"FEB 1 1971," concerning William Paul Rohde, et al; one dated, "NOV 23 1971," concerning Orlando Vigi, et al; one dated "DEC 22 1971," concerning Woodrow W. "Woody" Pruitt, et al; one dated, "DEC 15, 1971," concerning Orlando "Lendy" Vigi, et al; one dated,"JUN 1, 1971," concerning Anthony Michael "Tony" Grosso, et al; and one dated, "MAR 8____, concerning Andrew Zenuh, et al. (Underlined portions of dates are uncertain.)

Three photocopies of as many U. S. Government memoranda described as bearing "Bad" sets of initials purportedly by Mitchell: one dated, "JUL 6 1971," concerning Anthony Michael "Tony" Grosso, et al.; one dated, "JUN 21 1971," concerning Anthony Michael "Tony" Grosso, et al.; and one dated, "MAY 18 1970," concerning Andrew Zenuh, et al.

Results of Examination:

The handwritten initials, "JNM," which appear in the photocopy, specimen Qc1, contain handwriting characteristics which appear to be inconsistent with the known handwriting of Mitchell previously submitted to this laboratory in another matter.

A definite conclusion as to whether Mitchell, the former Attorney General, did or did not write the set of handwritten initials reproduced in specimen Qc1 was not reached because only a photocopy of the questioned memorandum and not the original memorandum itself was submitted for examination and because the known exemplars of Mitchell may not be fully representative of his ways of writing his autographic initials.

If further examination is desired, it is suggested that specimens from Mitchell be obtained following the suggestions in the attached "Recommended Procedures for Obtaining Known Handwriting and Hand Printing Specimens."

The purported initials of Mitchell on the copies of memoranda referred to under "Also Submitted" above, both those indicated by the handwritten word "Good," presumably to bear good initials of Mitchell and those bearing the handwritten word "Bad," as well as the one bearing the hand printed words, "STRIKE FORCE CLAIMS THIS IS AN AUTHENTIC....." were noted to contain features which do not correspond favorably with the known exemplars of Mitchell previously submitted to this laboratory in another matter.

(Continued on Page Three)

Report to Mr. J. E. McLaughlin

The submitted items brought to this laboratory by you on October 1, 1974, are retained since they consist of copies.

Signed: Joseph M. Enrlich
Document Examiner

Enclosure: "Recommended Procedures for Obtaining Known Handwriting and Hand Printing Specimens"

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IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS

AFFIDAVIT

James F. Brent, Special Agent, Federal Bureau of Investigation, Los Angeles, California, being duly sworn, states:

1. I am an "investigative or law enforcement officer... of the United States" within the meaning of Section 2510 (7) of Title 18, United States Code -- that is an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Section 2516, Title 18, United States Code.

2. This affidavit seeks authorization to intercept wire communications concerning Federal offenses involving a violation of Section 1955, Title 18, United States Code, and a conspiracy to commit the aforesaid offenses in violation of Title 18, United States Code, Section 371, which have been and are now being committed by Kale Kalustian, also known as Kelly, Patrick Dale Pond, Otto Vincent Marino, Patricia Jackson, Bill Stempke, and others as yet unknown.

a. Section 801 of Title VIII of the Organized Crime Control Act of 1970, Public Law 91-452, 91st Congress, October 15, 1970, contains special findings that illegal gambling involves the widespread use of, and has an effect upon, interstate commerce and the facilities thereof.

3. I have personally conducted the investigation of this offense, and because of my personal participation in this investigation and of reports made to me by other Agents of the Federal Bureau of Investigation, I am familiar with all the circumstances and offenses. Based on this familiarity, I allege the facts contained in the paragraphs below to show that:

EXHIBIT C

a. There is probable cause to believe that Kale Kalustian, also known as Kelly, Patrick Dale Pond, Otto Vincent Marino, Patricia Jackson, Bill Stempke, and others, as yet unknown, have been and are now committing offenses against the United States, that is to say:

(1) The continuing use of telephone communication facilities within the County of Los Angeles, State of California, involving the conducting, managing, directing, supervising, or owning, all or a part of, an illegal gambling business in violation of California Penal Code, Section 337, Subsection A (Prohibiting the placing and accepting of bets on sporting contests), all in violation of Title 18, United States Code, Section 1955; and

(2) Conspiring to commit the above offenses in violation of Title 18, United States Code, Section 371.

b. There is probable cause for belief that wire communications concerning those offenses will be obtained through the interception, authorization for which is applied herein.

c. Normal investigative procedures reasonably appear unlikely to succeed.

d. There is probable cause to believe that telephone numbers 213-288-9434, 213-288-9435, and 213-288-9436, subscribed to in the name of the Topper Club, 9108 East Garvey Boulevard, Rosemead, California; telephone number 213-686-0890, subscribed to in the name of Patricia Jackson, 2723 "D" Musgrove, El Monte, California; and telephone number 213-724-0776, subscribed to in the name of Bill Stempke, 5217 Via Corona, Los Angeles, California, are being used by Kale Kalustian, also known as Kelly, Patrick Dale Pond, Otto Vincent Marino, Patricia Jackson, Bill Stempke, and others, as yet unknown, in carrying out the offenses detailed above.

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4. Based on 21 years' experience as a Special Agent of the Federal Bureau of Investigation, including eight years devoted almost exclusively to gambling violations, it is known to me that most bookmakers lay-off bets made to them when such bets create with the bookmakers an unbalanced book. To further explain, a lay-off bookmaking operation is a procedure whereby one bookmaker turns over to another operator or to an agent for an operator, some of the bets or parts thereof which he has accepted and which he does not desire to hold. This situation generally occurs when a bookmaker feels he has over-extended himself or when his books become out of balance because of unusual heavy betting on one particular athletic team or in the case of a "horse book" when there is too much money wagered on one particular horse in a given race.

5. Also based on my previous experience in gambling matters, I have learned that in order for a bookmaker to have the best chance of making a profit and to stimulate betting activity, it is necessary for him to receive the "line" from someone. The "line" is the point spread of odds on a sporting event. I also know that the "line" is disseminated telephonically, and that this information is generally obtained during the morning hours. A bookmaker receives this "line" from someone who is a specialist in determining what the probable outcome of a sporting event will be or from someone who works for the specialist or has been in touch with him that day. In addition, "line" changes are telephoned to bookmakers. In order for a bookmaker to stay up to date on the latest "line" changes, he must have constant access to telephones to receive new information as it becomes available.

6. I also know from my past experience in gambling matters that much of the "line" for most sporting events originates in and is disseminated from Las Vegas, Nevada.

bookmaker's operation. Further, bookmakers often utilize a front office clerk sitting on a telephone spot to accept wagers from the bettors. The bettor calls his bet into a telephone number where the front office clerk makes a temporary record of the wager. Subsequently, these wagers are furnished to the bookmaker through a back office clerk who maintains the permanent betting records. Based on my investigation in this matter, I believe that the Kale Kalustian bookmaking organization operates in this manner.

8. On December 1, 1971, Confidential Source Number One told me that Kale Kalustian had told him within the past week that Kalustian was operating a split book with another bookmaker. Source said that Kalustian did not name the other bookmaker, but did mention that he obtained the sports line from Sonny De Falco daily, and that some of the people associated with Kalustian in his bookmaking operation are Pat Pond, Otto Marino, and Tony Hendrix. Kalustian also told source that his operation grossed between $4,000 and $5,000 per day, but that he kept himself insulated from the operation, and that he utilized a back office and several front offices to accept wagers.

10. Confidential Source Number One has been a bookmaker and has furnished information to the Federal Bureau of Investigation on at least 50 occasions over the past seven years, all of which has been corroborated by independent investigation or by other sources.

11. On December 1, 1971, Confidential Source Number One told me that Kale Kalustian told him within the last week that Otto Marino was taking action for Kalustian's bookmaking operation and that Marino takes action at the bar where he is employed. Source told me that he has seen Otto Marino working at a bar named "The Place", 11721 East Valley

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12. On November 30, 1971, Confidential Source Number Two told me that within the past week, he had been told by an individual, whom he knows to be a bookmaker, that Otto Marino is accepting wagers for the Kalustian bookmaking operation. This individual told source that Marino takes action at his place of employment, a bar in the El Monte, California area.

13. On October 4, 1971, Confidential Source Number Two told me that in a conversation, within the last week, with an individual whom he knows to be a bookmaker, this individual told him that Kale Kalustian's bookmaking operation was, at that time, accepting wagers on both horses and sports. This individual further stated that Kalustian does not personally accept wagers, but that he deals strictly through his agents, and utilizes front offices to accept wagers. This individual also told him that on the previous day he had been given telephone number 213-686-0890 to utilize in laying off sports action with the Kalustian operation, and telephone number 213-686-0335 to utilize in laying off horse action with the Kalustian operation. This individual told source that these two telephone numbers are front office telephones for Kalustian's book. Source further told me on October 4, 1971, that since receiving these telephone numbers, he has personally utilized them both in placing wagers.

14. On November 30, 1971, Confidential Source Number Two told me that during the past three days, he has utilized telephone number 213-686-0890.

15. Confidential Source Number Two is a bookmaker in the Los Angeles area who has furnished information to the Federal Bureau of Investigation on at least 25 occasions during the past two years, all of which has been corroborated by other sources or by independent investigation.

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16. On [illegible] 1, 197[illegible], [illegible] [illegible] [illegible]

	Patrick Dale Pond, Number LA 17 219 191	11/21/	
PD, Los Angeles, Calif.	Patrick Dale Pond, Number LA 613 436 P	5/1/62	Narc Act Felony Bkg 659168
SO, Los Angeles, Calif.	Patrick Dale Pond, Number B-858775	5/1/62	Planting cultivation poss etc of marijuana
SO, Los Angeles, Calif.	Patrick Dale Pond, Number B-858775 950773	3/11/63	Susp Bkmkg 60 days $190 fine susp 1 yr prob
PD, Monterey Park, Calif.	Patrick Dale Pond, Number B-9954	3/29/65	Warrant (270 PC non-support)
SO, Los Angeles, Calif.	Patrick Dale Pond, Number D-336848	12/18/69	Drk Driving (Misd)
SO, Los Angeles, Calif.	Patrick Dale Pond, Number 1326 443	11/3/70	Plant cultivate poss etc of marij

18. On October 20, 1971, Confidential Source Number Three told Special Agent Douglas R. Lund, Federal Bureau of Investigation, Los Angeles, California, who in turn told me, that in the past two weeks, he had been told by an individual, whom he knows to be a bookmaker, that this individual is associated with the bookmaking operation of Kale Kalustian. This individual also told source that Kalustian was the owner of the Topper Club, 9108 East Garvey Avenue, Rosemead, California, and that Pat Pond, who is employed at the Topper Club, is the number two man in Kalustian's bookmaking operation. This individual further told source that you can call the Topper Club at telephone number 213-288-9434, ask for reservations, and after a pause, you will be given an opportunity to place bets by utilizing an appropriate code name which had previously been given to the bettor.

19. On [illegible], source told Special Agent Douglas R. Lund, [illegible] Investigation, Los Angeles, California, who in turn told me, that he had placed bets in the above manner within the last week.

20. Confidential Source Number Three is a Los Angeles area bettor who has furnished information to the Federal Bureau of Investigation on at least five occasions during the past three months, all of which has been proven accurate by independent investigation or has been corroborated by other sources.

21. On October 20, 1971, Special Agent Burl P. Middendorf, Federal Bureau of Investigation, Los Angeles, California, reviewed the records of the Pacific Telephone and Telegraph Company, Los Angeles, California, and told me that telephone number 213-288-9434 is subscribed to by the Topper Club, 9108 East Garvey, Rosemead, California, and is in rotary association with telephone numbers 213-288-9435 and 213-288-9436. Special Agent Middendorf told me that the expression "in rotary association" means that two or more numbers are connected to an electronic switching system supplied by the telephone company which automatically switches a call from a busy number to the next number in the rotary until a non-busy line is found. All billing by the telephone company is to the first number in the rotary. The subscriber to a rotary system can call out on any number in the rotary and the telephone records will indicate that the call was made on the first number in the rotary. Since an incoming call in a rotary system could come into any of the numbers in rotary association, and since it is possible for the subscriber to call out on any of the rotary numbers, it is necessary to have electronic coverage of all lines in the rotary association to insure complete coverage.

22. On October 20, 1971, Confidential Source Number Three told Special Agent Douglas R. Lund, Federal Bureau of

number 213-686-0890 and placed bets, and has called telephone number 213-724-0776 and placed bets with a male who used the name "Bill." Source said that the above numbers were furnished to him by a friend of his whom he knows to be a bookmaker, and that this bookmaker told him he could utilize these numbers in placing wagers. This bookmaker further told source that he was associated with Kale Kalustian, whom he also knows as Kelly in Kelly's bookmaking organization, and identified Kelly as the owner of the Topper Club on East Garvey in Rosemead, California. Source said he was told these two telephone numbers were used in Kelly's bookmaking operation.

23. On November 30, 1971, Confidential Source Number Three told Special Agent Douglas R. Lund, Federal Bureau of Investigation, Los Angeles, California, who in turn told me, that within the last week, he has utilized telephone number 213-686-0890 in placing wagers

23a. Source Three further told Special Agent Lund, who told me, that when he has called telephone number 213-686-0890, the individual who answered identified himself as "Bruno" and received bets. Source Three said he has called that number on several prior occasions and that the same individual has taken his wagers.

24. On October 13, 1971, Special Agent Burl P. Middendorf, Federal Bureau of Investigation, Los Angeles, California, reviewed the records of the Pacific Telephone and Telegraph Company, 94 South Los Robles, Pasadena, California, and told me that telephone number 213-686-0890 is a non-published number subscribed to by Patricia Jackson, 2723 "D" Musgrove, El Monte, California. These records also indicated that Jackson

25. On October 14, 1971, Sergeant Dourise [illegible], Los Angeles Police Department, Intelligence, Los Angeles, California, told me that on September 30, 1971, Los Angeles Police Department Intelligence Officers had observed a 1970 Volkswagen, beige in color, California license 090 AYD, parked in the parking lot of the Topper Club at approximately 9:00 a.m.

26. The records of the California Department of Motor Vehicles, Sacramento, California, as reviewed by me on October 15, 1971, revealed that California license 090 AYD is assigned to a 1970 Volkswagen, registered owner Jacob Martin Jackson, Jr., or Patricia Jean Jackson, 227 Orange Blossom Avenue, La Puente, California.

27. On October 19, 1971, Confidential Source Number Four told Special Agent John Robert Barron, Federal Bureau of Investigation, Los Angeles, California, who in turn told me, that Jake Jackson and Patricia Jackson formerly resided at 227 Orange Blossom Avenue, La Puente, California, and currently resides at El Monte, California. The Jacksons, within the last week, told source that they are currently accepting wagers for a large organization and have done so for approximately two years.

28. On November 29, 1971, source further told Special Agent John Robert Barron, Federal Bureau of Investigation, Los Angeles, California, who in turn told me, that within the last week, both Patricia and Jake Jackson had told source that they are still accepting wagers as a part of a bookmaking organization.

29. Confidential Source Number Four is an acquaintance of the Jacksons and is a private citizen with no record of involvement in gambling, who voluntarily contacted the Federal Bureau of Investigation with the above information.

D. Hill

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[illegible] Pasadena, California, who in turn told me, that within the last week, source has called telephone number 213-7[illegible], and placed bets with a male who used the name "Bill" as was previously set out in Paragraph 22 above.

30. On September 23, 1971, Special Agent Burl P. Middendorf, Federal Bureau of Investigation, Los Angeles, California, reviewed the records of the Pacific Telephone and Telegraph Company, 94 South Los Robles, Pasadena, California, and told me that telephone number 213-724-0776 is a non-published number

31. On November 12, 1971, Sergeant Dick Williams, Los Angeles Police Department, Intelligence, Los Angeles, California, told me that a confidential source of his told him today that source was betting with an unknown male at telephone number 213-724-0776 for over the past month. Source told Williams, who in turn told me, that source had placed bets at the above telephone number as recently as within the last week. Sergeant Williams said his source told him when the source received telephone number 213-724-0776 for betting, the source was also furnished telephone number 213-288-9434 as a number to be called in the event telephone number 213-724-0776 was not operating. The source was told telephone number 213-288-9434 was to be a back-up number to stay in contact with the operation.

31a. Sergeant Dick Williams, Los Angeles Police Department, Intelligence, Los Angeles, California, told me that his source has been furnishing information on a confidential basis to the Los Angeles Police Department for over seven months and during that time, has furnished information on at least 15 occasions, all of which has been proven accurate by independent investigation or corroborated by other sources.

31b. On October 15, 1971, Sergeant Douglas Kester, Los Angeles Police Department, Intelligence, Los Angeles, California, told me that officers of the Los Angeles Police Department have, in the past month, observed Pat Pond riding as a passenger in a Volkswagen, California license VED 253.

32. The records of the California Department of Motor Vehicles, Sacramento, California, as reviewed by me on October 15, 1971, revealed that California license VED 253 is issued to a 1967 Volkswagen with a registered owner of William

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Boulevard, Lynwood, California, told Special Agent Ronald D. Anderson, Federal Bureau of Investigation, Los Angeles, California, who in turn told me, that Bill Stempke is currently residing at 11229 Louise Avenue, Lynwood, California.

32b. On November 11, 1971, Special Agent Ronald D. Anderson, Federal Bureau of Investigation, Los Angeles, California, told me that at approximately 9:28 a.m. today, he had observed a 1967 Volkswagen, tan in color, bearing California license plates VED 253, parked on the street immediately in front of the apartment building located at 5217 Via Corona, Los Angeles, California.

32c. On November 17, 1971, Special Agent Burl P. Middendorf, Federal Bureau of Investigation, Los Angeles, California, reviewed the records of the Pacific Telephone and Telegraph Company, 94 South Los Robles, Pasadena, California, and the records of the Pacific Telephone and Telegraph Company, 742 South Hill Street, Los Angeles, California, and told me that the subscriber to the service set out in Paragraph 30, Bill Stempke, was employed by Triangle Bowl. He also told me that Stempke subscribes to service at 11229 Louise Avenue, Lynwood, California, telephone number 639-7782. In applying for this service, he said he was employed as a clerk for Triangle Bowl.

33. The informants named herein have all said that they will not testify to information they have provided, even if granted immunity.

34. My experience and the experience of other Agents has shown that even though gambling "customers" are identified, they are often unwilling to furnish information to law

[redacted] give information concerning a gambling operation. Experience has further established that even though telephone toll records are available which indicate a person is engaged in illicit gambling, the records themselves are not sufficient to prove the gambling activities. Standard investigative techniques have not succeeded in providing evidence to sustain prosecution in this case and would only succeed to a limited degree in establishing that Kale Kalustian, also known as Kelly, Patrick Dale Pond, Otto Vincent Marino, Patricia Jackson, Bill Stempke, and others as yet unknown, are involved in gambling activities over the telephone subscribed to in the name of the Topper Club.

[redacted] obtainable on Kale Kalustian, also known as Kelly, Patrick Dale Pond, Otto Vincent Marino, Patricia Jackson, Bill Stempke, and others as yet unknown, contain little probability of success in securing presentable evidence. Based upon my knowledge and experience as a Special Agent of the Federal Bureau of Investigation in the investigation of gambling cases and my association with other Special Agents who have conducted investigation of gambling activities, normal investigative procedures appear to be unlikely to succeed in establishing that the above individuals are involved in gambling activities over the aforementioned telephones in violation of Federal laws. My experience and the experience of other Agents has shown that gambling raids and searches of gamblers and gambling establishments have not, in the past, resulted in the gathering of physical or other evidence to prove all elements of the offense. I have found through my experience and the experience of other Special Agents, who have worked on gambling cases, that gamblers frequently do not keep permanent records. If such records have been maintained, gamblers, immediately prior to or during a physical search, sometimes destroy the records. Additionally, records that have been seized in past gambling cases have generally not been sufficient to establish elements of Federal offenses because such records are difficult to interpret, and many times are of little or no significance without further knowledge of the gamblers' activities. Therefore, the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violations of these statutes.

J. Kelly

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[illegible] interceptions of, wire or oral communications involving any of the persons, facilities, or places specified in this affidavit.

36. The activity to be electronically covered is believed to be a continuing criminal conspiracy. It is further believed that the evidence sought will be obtained on a continuing basis for several days succeeding the first receipt of the particular communications that are the object of this request for interception. Wherefore, because of the existence of facts and underlying circumstances of the continuing investigation listed above in Paragraphs 4 through 32b, I submit that the probable cause as submitted in Paragraphs 3a, 3b, and 3d exists; that the extensive normal investigative procedures tried, as set forth in Paragraphs 4 through 32b, have failed to gather evidence necessary to sustain prosecution for violation of the offenses enumerated in Paragraph 3a, and reasonably appear unlikely to succeed; that an order from this Court should ensue to intercept wire communications that will not terminate upon the first interception that reveals the manner in which Kale Kalustian, also known as Kelly, Patrick Dale Pond, Otto Vincent Marino, Patricia Jackson, Bill Stempke, and others, as yet unknown, participate in the illegal use of telephone facilities for the transmissions of bets and betting information and in aid of racketeering enterprises, but continue until interception reveals the identities of confederates of Kale Kalustian, also known as Kelly, Patrick Dale Pond, Otto Vincent Marino, Patricia Jackson, Bill Stempke, and others, as yet unknown, their places of operation and the nature of the conspiracy involved therein or for a period

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of fifteen (15) days from the date of [illegible]

[illegible]

James F. Brent

JAMES F. BRENT
Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me
this 27 day of Dec.,
1971, at Los Angeles, California.

Jerry Gitt

United States District Judge

FEDERAL DEFENDER PROGRAM
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

219 S. DEARBORN STREET - SUITE 1744
CHICAGO, ILLINOIS 60604

TERENCE F. MAC CARTHY
EXECUTIVE DIRECTOR

THOMAS D. DECKER
DEPUTY DIRECTOR

431-9400

November 6, 1974

MEMORANDUM

To: All Federal Defender Offices

From: Thomas D. Decker

Re: Wiretap developments

As you know, there have been developments beyond the Lindenbaum and Will Wilson signature imbroglio in the area of court-authorized wiretaps. My understanding is that substantial evidence has been compiled to show, in at least a number of cases, that the initials "JM", said by the former Attorney General in affidavits to be his, in fact are not. A brief summarizing some of the developments is attached.

In addition, a judge in Chicago has ruled tentatively that it is not enough for a finding of statutory compliance that Mr. Mitchell affixed his initials. That is, the judge appears prepared to hold, there must be an actual exercise of discretion that followed an actual examination of the file that underlay the request for wiretap authorization.

We have several cases that are now being prepared for trial. It would be most appreciative if you would advise me of any developments in your districts, supplying me with copies of opinions, motions and briefs if at all possible. We will be happy to photocopy and return them. It may be possible then to obtain some degree of uniformity in our approaches in this class of case.

Thomas D. Decker

TDD:glk

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	
v.	No. 74 Cr. 392
ARTHUR SONNENFIELD, et al.	

RESPONSE TO GOVERNMENT'S MEMORANDUM
IN OPPOSITION TO DEFENDANTS' REQUEST
FOR PERMISSION TO DEPOSE SOL LINDENBAUM

The government, in its Memorandum, says the defense request to depose Sol Lindenbaum is "an unnecessary exercise in futility which cannot be justified by the defendants."

The government is wrong.

Information made available by the government does not begin to resolve the questions raised by the papers in this case.

That is, did then-Attorney General Mitchell actually give his personal approval to the requests for authority to tap telephone conversations? That question was not decided by the Supreme Court in United States v. Chavez, 94 S.Ct. 1849 (1974).

Defense counsel have been trying to learn how purported JMM memoranda are faring in other places. We have gathered enough information to detect a distinctly pink aftertaste. The investigation continues, but we submit that the documents and transcripts presented to the Court in this Response and the accompanying exhibits are sufficient to justify the taking of Sol Lindenbaum's deposition. We further suggest Lindenbaum's testimony would mark a starting point for the inquiry.

BEST COPY AVAILABLE

(The government observer [illegible] has not yet certified affidavits in support of the August 4, 1970 Sullivan Memorandum. The reason for that has at least something to do with the [illegible] case. The man who would sign such affidavit, John N. Mitchell, is now a defendant in a Washington, D.C. trial, where he is charged with conspiring to obstruct justice. On October 2, 1974, the government offered testimony from ex-Attorney General Mardian. He testified that John Mitchell personally approved the illegal telephone bugging and that Mitchell never read summaries of the overheard conversations.

Eleven months later, Wednesday, October 30, 1974, we make this point because the same government which is prosecuting Mitchell in Washington, D.C. is suggesting that Congress and Congress rely on and look no further than the bland Mitchell affidavit offered in this case. We decline to do so.)

What follows is a summary of the information collected to date. The documents referred to as exhibits are under separate cover.

A. The U.S. Supreme Wiretap

There are two memoranda authorizing the wiretaps in this case. The first is dated September 10, 1970 (exhibit 1). The second is dated October 6, 1971 (exhibit 2).

Set Thereafter, Assistants Pollard to the Attorney General, executed two affidavits (exhibits 3 and 4). Each says the Attorney General approved the requests to seek [illegible] authority to wiretap. Each refers to Mitchell's "personally initialed memorandum of that date."

John N. Mitchell, in an affidavit dated July 17, 1974, also refers to one "personally initialed memorandum" of those dates, reflecting my favorable action on the requests (Exhibit 5)."

In another case brought in this district, United States v. Gebhardt, et al., 71 CR 331, Lindenbaum filed an almost identical affidavit (Exhibit 6). In it, he said John Mitchell approved wiretap requests by means of "personally initialed" memoranda dated December 14, 1970, and January 13, 1971 (Exhibits 7 and 8).

Defense counsel asked David J. Purcell, an examiner of questioned documents, to compare the initials on the two United States v. Tito memoranda with the December 14, 1970, United States v. Gebhardt memorandum -- all purportedly initialed by Mitchell. Mr. Purcell found "differences" between the writings. He refrained from any final opinion because he was working from Xerox copies and did not have sufficient sets of known Mitchell initials. (Purcell's report is Exhibit 9.)

B. The Consiglio, et al., Ventura

The government's memorandum cites United States v. Fantasia, 341 F.Supp. 503 (D. Conn.1972). Since that decision, the case was sent back to the district judge for further inquiry into the authorizing documents.

Two memos were at issue -- February 13, 1970, and April 6, 1970 (Exhibits 10 and 11). There, too, Lindenbaum filed an affidavit, dated December 14, 1971, in which he said Mitchell approved each request in a "personally initialed memorandum"(Exhibit 12).

[illegible] Patrick J. Dolan, [illegible] Professor of Political Science, University of [illegible] Missouri, [illegible] Columbia, Missouri, [illegible] of the most [illegible] of human [illegible] [illegible] that [illegible] [illegible] [illegible]

[illegible] submitted to Judge Decker [illegible] qualified and [illegible] orders. The judge will appoint an agent to monitor the [illegible] To this date, the government [illegible] not to [illegible] Quellos.

D. The Swanez-Gallardo [illegible] Wiretaps

Two memoranda supported the wiretap applications in United States v. Suarez, et al., a case now awaiting decision in the Seventh Circuit Court of Appeals, No. 71-1611.

The memorandum, Exhibits 19 and 20, both bear the initials "JBMP". The first is dated May 14, 1970, the second June 18, 1970.

Sol Lindenbaum, in an affidavit dated February 25, 1972, said the May 14, 1970 memo was "personally initiated" by Mitchell, but that he, Lindenbaum, "caused" Mitchell's initials to be placed on the June 18, 1970 memo. Lindenbaum said he concluded Mitchell would have approved the request had it been submitted to him, but that the "Attorney General was not available."(Exhibit 21).

In an affidavit dated February 16, 1972, John Mitchell said he never designated an assistant attorney general to act under Title 18, section 2516(1), but that sometime in 1969 "I verbally authorized Executive Assistant [Lindenbaum] to act on my behalf on requests that might be transmitted by the Criminal Division at a time when I was not available to act on them."

Mitchell concludes:

> "Since November 20, 1971, I have personally authorized all applications for interception orders which have been presented to Federal judges pursuant to 18 U.S.C. 2516(1)"(Exhibit 22).

That court's order of August 29, 1973, cancelled the purported trial date of October 9 and the pending motions in the Peddle case.

The Ianelli case was argued in the Court of Appeals on [illegible], 1974. During the argument, counsel challenged the accuracy of Lindenbaum's affidavit. The Judges wanted to know what steps the defendants had taken in the court below to determine the facts that bore on the affidavit's assertions.

E. The Deutsch and Ianelli Hearings

Some courts have conducted evidentiary hearings into the facts surrounding JMM memoranda. Most illustrating is the hearing conducted March 19, 1973, in the United States District Court for the Southern District of Florida, before Judge W. O. Mehrtens. The case was United States v. Bowdach, et al., 71-414-Cr.

Earlier, on January 11, 1972, an extremely limited deposition was taken from Sol Lindenbaum in connection with United States v. Ianelli, et al., 71-02, (W.D. Pa.).

The following points are reflected by the transcripts:

1. Mitchell and Lindenbaum disagreed under oath on the extent of the Executive Assistant's powers.

Mitchell testified that Lindenbaum placed the JMM initials on the memos "when I was in the country pursuant to telephone instructions." (T.58, Exhibit 23). That is,

> "Q: So the only time that he would sign without contacting you is if you happened to be out of the country?

A: [illegible] correct. [illegible]

Apparently, that is not correct.

Mitchell, in his affidavit in the [illegible] case, [illegible] the "verbal authorization" Lindenbaum [illegible] Mitchell was not available. And, in the same case, Lindenbaum in his affidavit that the Attorney General was not available, but the Executive Assistant approved it anyway because he assumed Mitchell would have done so had he been there (Exhibit 21).

In the Baldwin hearing, Lindenbaum was asked what he would do with an application if he could not reach the Attorney General. His answer:

> "Under these circumstances I feel if he were not available, I had authorization to proceed." (T.215, Exhibit 24).

In fact, there were a "few occasions" when Mitchell was unavailable within the Washington, D.C. area. In those cases, Lindenbaum would act "when there were circumstances which prompted the expeditious action." (T.238, Exhibit 25).

2. Mitchell testified that he only put his initials on authorizing memoranda.

During 1969, 1970 and until November of 1971, secretaries in Mitchell's office and in Lindenbaum's office placed the JNM initials on authorizing memoranda.

Lindenbaum testified:

> "Q: Referring to the initials on this memorandum over the words 'John N. Mitchell, Attorney General,' are they yours?
>
> A: Do you mean did I place them there?

Q: Yes.

A: [illegible] (T.220, Exhibit 26).

.....

[illegible] Mr. Mitchell's initials on [illegible]?

A: I don't know. I won't have a count. But as I say [illegible] not only ones [illegible] personally by my own hand but those which I had put on by one of his secretaries.

Q: One of his secretaries puts his initials there?

A: Sometimes, that's correct.

Q: At your direction?

A: At my direction.

Q: And you have no idea or you can't tell how many times it has been done?

A: No sir."(T.213-214, Exhibit 26).

.....

"Q: Did you communicate with the people in the Criminal Division and let them know that you were authorizing wiretaps?

A: They knew about it, and I'm not sure that they knew about it before that very time. It may have been just about that very time when the question arose as to Mr. Wilson.

Q: Mr. Mitchell's secretary knew about it?

A: Yes.

Q: And your secretary knew about it?

A: Yes.

Q: And on occasion they would put Mr. Mitchell's initials on?

A: At my direction."(T.222-223, Exhibit 27).

Clearly, Landenbaum acted as the Attorney General when Mitchell was not available:

"Q: [illegible] Mitchell give you the power to [illegible]?

A: Yes, he did. [illegible]

Q: And how is it that you [illegible] the authority you had that he had given you under this?

A: Well, he didn't give me the power to do anything. He gave me the power that is described when he [illegible] which is exercised by this document.

Q: Did anybody else have this power except you and Mr. Mitchell?

A: Nobody else had this power, all rights and responsibilities it has exercised by another official of the Department of Justice.

Q: By Mr. Kleindienst?

A: That's right."(T.225, Exhibit 29).

3. The authorizing memoranda probably were not prepared by Mitchell or by anyone in his office.

A reading of the affidavit signed by Mitchell in the instant case might lead one to believe the Attorney General prepared the authorizing memoranda in response to papers sent him by the Criminal Division. That is not the case.

In his deposition in Ianelli, Sol Lindenbaum said the Mitchell memorandum in that case was not prepared in the Attorney General's office. It was prepared in the Criminal Division and sent to Lindenbaum, "with the other papers." (T.20, Exhibit 28)

There is something else about the memos that might raise doubts about their authenticity. The Attorney General, according to Lindenbaum, initialed the memos before any date was placed on them:

"Q: What we are getting at: did it bear that date, when you examined it the first time?

A: That date was put on, I believe, in my office, after the Attorney General signed it. That is ordinarily the way we handle these papers.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Appellee,	)	
	)	
v.	)	OPINION
	)	
KALE KALUSTIAN, (74-3314)	)	FILED
PATRICK DALE POND, (74-3315)	)	
STANLEY NORMAN GRAY, (74-3305)	)	AUG 4 1975
DAVID SELDITCH, (74-3264)	)	
OTTO VINCENT MARINO,	)	EMIL E. MELE, JR. / CLERK
LEOPOLDO OBEZO,	)	U. S. COURT OF APPEALS
MABLE LINDA CUCCIA, (74-3265)	)	
	)	
Appellants.	)	

Appeal from the United States District Court for the Central District of California

Before: ELY and HUFSTEDLER, Circuit Judges, and SKOPIL, District Judge*

SKOPIL, District Judge:

Appellants seek review of their convictions for illegal gambling activities. 18 U.S.C. §§1955 and 2. They claim their motions for suppression of evidence were improperly denied. They also argue that there was insufficient evidence to sustain the verdicts.

According to the Government, confidential informants "advised" federal agents in 1971 that defendant Kalustian was operating a bookmaking operation from the Topper Club (Club) in Rosemead, California. Defendants Pond and Marino, among others, were identified as agents for the operation. On December 20, 1971, the Department of Justice sought court orders authorizing wire taps on three telephones at the Club, one at defendant Stempke's residence, and one at the residence of Patricia Johnson. The application was authorized by

*Honorable Otto R. Skopil, Jr., United States District Judge for the District of Oregon, sitting by designation.

EXHIBIT E

Attorney General John Mitchell and granted on December 20, 1971. 18 U.S.C. § 2518(1)(c) provides that such applications shall include

> "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous."

The Government attempted to fulfill that requirement through affidavits supplied by Special FBI Agent James Brent (Affidavits), which essentially contained the following representations:

> "The informants named herein have all said that they will not testify to information they have provided, even if granted immunity. * * *
>
> "Experience has further established that even though telephone toll records are available which indicate a person is engaged in illicit gambling, the records themselves are not sufficient to prove the gambling activities. Standard investigative techniques have not succeeded in providing evidence to sustain prosecution in this case and would only succeed to a limited degree in establishing that Kale Kalustian, also known as Kelly, Patrick Dale Pond, Otto Vincent Marino, Patricia Jackson, Bill Stempke, and others as yet unknown, are involved in gambling activities over the telephone subscribed to in the name of the Topper Club. * * *
>
> "Furthermore, such investigative techniques as physical surveillance and the records obtainable on Kale Kalustian, also known as Kelly, Patrick Dale Pond, Otto Vincent Marino, Patricia Jackson, Bill Stempke, and others as yet unknown, contain little probability of success in securing presentable evidence. Based upon my knowledge and experience as a Special Agent of the Federal Bureau of Investigation in the investigation of gambling cases and my association with other Special Agents who have conducted investigation of gambling activities, normal investigative procedures appear to be unlikely to succeed in establishing that the above individuals are involved in gambling activities over the aforementioned telephones in violation of Federal laws. My experience and the experience of other Agents has shown that gambling raids and searches of gamblers and gambling establishments have not, in the past, resulted in the gathering of physical or other evidence to prove all elements of the offense. I have found through my experience and the experience of other

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> Special Agents, who have worked on gambling cases, that gamblers frequently do not keep permanent records. If such records have been maintained, gamblers, immediately prior to or during a physical search, sometimes destroy the records. Additionally, records that have been seized in past gambling cases have generally not been sufficient to establish elements of Federal offenses because such records are difficult to interpret, and many times are of little or no significance without further knowledge of the gamblers' activities. Therefore, the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violation of these statutes. * * *
>
> "Wherefore, because of the existence of facts and underlying circumstances of the continuing investigation listed above in paragraphs 4 through 32b, I submit that the probable cause as submitted in paragraphs 3a, 3b, and 3d exists; that the extensive normal investigative procedures tried, as set forth in paragraphs 4 through 32b, have failed to gather evidence necessary to sustain prosecution for violation of the offenses enumerated in paragraph 3a, and reasonably appear unlikely to succeed; * * *"

Appellants contend that their motions to suppress the wiretap evidence should have been granted because the Government's application did not satisfy 18 U.S.C. § 2518(1)(c). They argue that the supporting affidavits contain bald conclusions rather than facts from which the Attorney General and the judge could determine whether "normal investigative procedures" were viable alternatives to electronic surveillance. § 2518(3)(c).

Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (Act), 18 U.S.C. §§ 2510 et seq. absolutely prohibits electronic surveillance by the federal government except under carefully defined circumstances and after securing judicial authority. Procedural steps provided in the Act require strict adherence. United States v. Giordano, 94 S.Ct. 1820, 416 U.S. 505 (1974). The importance of these procedures reflects the dual purpose of Title III, which is to

"(1) [protect] the privacy of wire and oral communications and (2) [delineate] on a uniform basis the circumstances and conditions under which the interception of the wire and oral communications may be authorized." S. Rep. No. 1097, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Admin. News 2112, 2153 (hereinafter cited as "History").

Title III was written to create limited authority for electronic surveillance in the investigation of specified crimes thought to lie within the province of organized criminal activity. History, pp. 2153-2163. It was designed to conform to prevailing constitutional standards. Berger v. New York, 388 U.S. 41 (1967); Katz v. United States, 389 U.S. 347 (1967). The restraint with which such authority was created reflects the legitimate fears with which a free society entertains the use of electronic surveillance. As stated in Berger, supra, "Few threats to liberty exist which are greater than that posed by the use of evesdropping devices." 388 U.S. at 63.

Section 2518(1)(c) of the Act

"is patterned after traditional search warrant practices and present English procedure in the issuance of warrants to wiretap by the Home Secretary. [citation omitted] The judgment [of the judge or magistrate] will involve a consideration of all the facts and circumstances. * * * Merely because a normal investigative technique is theoretically possible it does not follow that it is likely. See Giancana v. United States, 352 F.2d 921 (7th Cir. 1965), cert. denied 382 U.S. 959; New York v. Saperstein, 2 N.Y. 2d 140 N.E.2d 252 (1957). What the provision envisions is that the showing be tested in a practical and commonsense fashion. Compare United States v. Ventresca, 380 U.S. 102 (1965)." History, p. 2190.

Our review of the wiretap authorization is limited. We are reminded that

"[w]here [the underlying circumstances in the affidavit] are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than

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3-19-73—100M—1009

a commonsense, manner." United States v. Ventresca, supra at 109.

Within our prescribed limits, however, the utmost scrutiny must be exercised to determine whether wiretap orders conform to Title III. The Act has been declared constitutional only because of its precise requirements and its provisions for close judicial scrutiny. United States v. Bobo, 477 F.2d 974 (4th Cir. 1973); United States v. Cox, 449 F.2d 679 (10th Cir. 1971), cert. denied, 406 U.S. 934 (1972); United States v. Cox, 462 F.2d 1293 (8th Cir. 1972). Our review of wiretap orders must ensure that the issuing magistrate properly performed his function and did not "serve merely as a rubber stamp for the police". Ventresca, supra at 109.

The affidavits set forth facts from which probable cause to infer the operation of a gambling conspiracy could be gleaned. Nearly all of these "facts" trickled into the ears of FBI agents through a series of professional gamblers and bookmakers moonlighting as stoolies for the Government. This colorful procedure of shuffling through stacks of hearsay and double hearsay reports from the "underworld" to construct an affidavit prompts some intriguing ethical questions. Unfortunately, as the affidavits attest, none of the Government's underworld journalists are quite willing to testify. Evidence of the telephone numbers used by the bookmaking operation and the identities of some of the conspirators could not successfully support a prosecution without that testimony.

Consequently the investigating officials decided electronic surveillance was imperative. They discarded alternative means of further investigation because "knowledge and experience" in investigating other gambling cases convinced them that "normal investigative procedures"

were unlikely to succeed. Agent Brent recites that searches are often fruitless because gamblers keep no records, destroy them, or maintain them in undecipherable codes. Use of the phone company's records alone is inconclusive.

The affidavit does not enlighten us as to why this gambling case presented any investigative problems which were distinguishable in nature or degree from any other gambling case. In effect the Government's position is that all gambling conspiracies are tough to crack, so the Government need show only the probability that illegal gambling is afoot to justify electronic surveillance. Title III does not support that view.

> "Congress legislated in considerable detail in providing for applications and orders authorizing wire tapping and evinced the clear intent to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must state that and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous." United States v. Giordano, supra. (emphasis added)

The Government's position is further undermined by the activity of other crime-fighting organizations. California, among other states, deprives its policemen of electronic surveillance in all cases. This has not prevented them from successfully prosecuting gambling crimes.

Obviously electronic surveillance can facilitate criminal investigation. Other investigative techniques are usually slower and more difficult. Unless they "have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous", however, Title III does not allow wiretapping to replace

them.

The Government failed in this case to satisfy 18 U.S.C. § 2518(1)(c). Its application did not adequately show why traditional investigative techniques were not sufficient in this particular case. A reviewing judge is handicapped without a full and complete statement of underlying circumstances. The Government must (1) inform him of every technique which is customarily used in police work in investigating the type of crime involved, and (2) explain why each of them has either been unsuccessful or is too dangerous or unlikely to succeed because of the particular circumstances of that case. Title III and the individual's right to privacy which it seeks to preserve demand no less.

Mere conclusions by the affiant are insufficient to justify a search warrant, Aguilar v. Texas, supra, or a wiretap order. More specifically, they do not provide facts from which a detached judge or magistrate can determine whether other alternative investigative procedures exist as a viable alternative.

The trial court's order denying appellants' motions for suppression of electronic surveillance evidence is reversed, and all consolidated cases are remanded for a new trial. All evidence gathered through electronic surveillance pursuant to the original § 2518 order and its extensions shall not be admitted in subsequent proceedings.

In view of that ruling, the other issues on appeal are not reached.

REVERSED and REMANDED

DEC 1 1 1975

EMIL E. MELFI, JR. CLERK
U. S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)
Appellee,	)
v.	) ORDER
KALE KALUSTIAN, (74-3314)	)
PATRICK DALE POND, (74-3315)	)
STANLEY NORMAN GRAY, (74-3305)	)
DAVID SELDITCH, (74-3264)	)
OTTO VINCENT MARINO,	)
LEOPOLD OBEZO,	)
MABLE LINDA CUCCIA, (74-3265)	)
Appellants.	)

On Appeal from the United States District Court
for the Central District of California

Before: ELY and HUFSTEDLER, Circuit Judges, and SKOPIL,* District Judge

The Opinion of August 4, 1975, is amended as follows:

The paragraph appearing on page 5 of the slip opinion beginning with the words "The affidavits set forth" is changed to read as follows:

The affidavits set forth facts from which probable cause to infer the operation of a gambling conspiracy could be gleaned. Nearly all of these "facts" trickled into the ears of FBI agents through the efforts of a series of professional gamblers and bookmakers. Unfortunately, as the affidavits attest, none of the underworld informants are willing to testify. The refusal of the informants to testify is a matter for the court to consider in authorizing electronic surveillance. However, standing alone, it may not be sufficient. Evidence of the telephone numbers used by the bookmaking operation and the identities of some of the conspirators could not successfully support a prosecution without that testimony.

*Honorable Otto R. Skopil, Jr., United States District Judge for the District of Oregon, sitting by designation.

The paragraph appearing on page 6 of the slip opinion beginning with the words "Obviously electronic surveillance" is changed to read as follows:

Obviously electronic surveillance can facilitate criminal investigation. Because other investigative techniques are usually slower and more difficult, Congress did not require exhaustion of "all possible" investigative techniques before orders for wiretaps could be issued. U.S.A. v. Smith, ____ F.2d _____ (9th Cir., July 2, 1974). But Title III does not allow wiretapping to replace such other techniques unless they "have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous".

The paragraph immediately following is changed to read as follows:

The Government failed in this case to satisfy 18 U.S.C. § 2518(1)(c). Its application did not adequately show why traditional investigative techniques were not sufficient in this particular case. A judge reviewing a wiretap application is handicapped without such a showing. Title III and the individual's right to privacy, which it seeks to preserve, demand no less than a full and complete statement of underlying circumstances.

The amended opinion should be printed in slip sheet form.

AMT

MICROFILM
JUL 21 1976
BRIDGEPORT

United States District Court
District of Connecticut
FILED AT ~~BRIDGEPORT~~ New Haven
April 8, 1976
Sylvester A. Markowski, Clerk
By:
Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

UNITED STATES :

VS : DOCKET NO. H-298

RICHARD LANESE :

MOTION TO SUPPRESS

The defendant, Richard Lanese, having been charged in the above-entitled criminal indictment, respectfully moves the Court, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure and the 4th Amendment to the United States Constitution, to suppress for use as evidence against him the items set forth in the inventory and return, a copy of which is attached hereto and made Exhibit A; a statement of the defendant, Richard Lanese, obtained at the time of the execution of said search and seizure warrant; an incoming telephone call intercepted by officers executing said search and seizure warrant, for the following reasons:

1. On or about December 30, 1971 a search warrant was issued for the premises known as 177 Walnut Street, Milford, Connecticut, more particularly described in said search warrant.

2. On or about January 1, 1972, in pursuant to said search and seizure warrant, the premises of the defendant, 177 Walnut Street was searched by members of the Federal Bureau of Investigation, and the items enumerated above were seized.

7/19/76
For reasons stated in open court the motion is denied except that the motion to suppress statements of the defendant is reserved for time of trial
RCB
MSDJ

FILED
U.S. DISTRICT COURT
NEW HAVEN, CONN.
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DISTRICT COURT
EW HAVEN, CONN.

3. Said search and seizure was unreasonable and invalid for the following reasons:

a. The command of said search and seizure warrant authorized the seizure of "gambling records and wagering paraphernalia and evidence of a criminal offense in violation of laws of the United States, including but not limited to, betting slips and records, account sheets and books, line and price sheets and notations, sports information papers and schedules, telephone instruments, slips and books, lists of code names, financial statements, and United States currency... The command of said search and seizure warrant was overly broad and left to the discretion of the executing officers what items were to be seized, thus constituting a general warrant and rendering said search conducted under its authority as a general exploratory search.

b. The specific items included within the command of said warrant, and set forth above, include innocuous items, such as account sheets and books, sports information papers and schedules, slips and books, financial statements and United States currency, bearing no relation to the crime purported to have been committed, as further set forth in the command of said search and seizure warrant.

4. Said search and seizure is further invalid in that the affidavit in support of said search and seizure warrant fails to set forth sufficient, reliable facts, to allow a neutral and dettached magistrate to make an independent determination that probable cause existed to believe that the items sought to be seized were present on the premises of the defendant, in that:

a. The bulk of the information set forth in the affidavit of Special Agent Danny F. Steinke, and relied upon by Special Agent Steinke concluding that probable cause existed to justify the search and seizure, was Special Agent Steinke's synopses of phone conversations between certain named individuals obtained as a result of a Court ordered wire tap in December of 1971. Within Special Agent Steinke's synopses of conversations seized pursuant to said wire tap are statements attributed to the defendant, Nicholas Lanese. At page 8 of said affidavit it is related that on December 17, 1971 at 2:04 p.m. William Balog operating telephone number 372-5404, received a phone call from Nicholas Lanese at which time they allegedly discussed aspects of a purported gambling operation. It appears from this paragraph of Agent Steinke's affidavit that the identity of Nicholas Lanese and William Balog as the parties to said conversations has been established. An examination of the transcript of this conversation indicates that the parties to said conversation were listed as "Bill" and "UM", which appears to be an abreviation for the phrase "unidentified male" employed throughout the wire tap transcripts. Special Agent Steinke fails to set forth any facts indicating the manner in which he concluded that the parties to said conversation were in fact William Balog and Nicholas Lanese. The identification of the parties to that conversation contained in paragraph 8 of the affidavit is a bare conclusion and assertion by Special Agent Steinke not founded upon fact and further constitutes a deception or other imposition upon

the issuing magistrate. At page 9 of said affidavit a conversation is related again between William Balog and Nicholas Lanese as having occured at 7:52 p.m. on December 17, 1971. An examination of the transcript of said conversation indicates that said conversation occured between Bill Balog and "UM" later referred to in conversation as "Nick." No facts are set forth in said affidavit to justify the conclusion of Agent Steinke that Bill Balog was in fact a party to said conversation and that "Nick" was in fact Nicholas Lanese.

b. Said affidavit fails to set forth sufficient facts to allow a magistrate to determine that probable cause exists to believe that the items specified in the command of said warrant were in fact upon the person of the defendant, in that, said affidavit merely relates conversations seized pursuant to the Court ordered wire tap and combines the synopses of said conversations with the speculation and conjecture of Agent Steinke, purportedly based on his experience, as set forth under the title "sports bookmaking" on pages 1, 2, 3, 4 of said affidavit.

c. Said affidavit further relates the seizure of conversations allegedly occuring between Bill Balog and a person identified as "RicH" or "Richie". On page 9 of said affidavit a conversation is related which purportedly took place between William Balog and Nicholas Lanese and in which reference was made by Balog to Richard Lanese, the brother of Nicholas Lanese. An examination of the transcript of said conversation makes no reference to Richard Lanese. No facts

are set forth to allow the magistrate to determine that the brother of the male identified solely as "Nick" is in fact Richard Lanese.

d. Said affidavit is further invalid in that pages 5 and 6 of the affidavit relate information received from an informant, without indicating sufficient facts to establish a reliability of said informant.

e. Said affidavit is further invalid in that the greater part of the information related therein was obtained as a result of electronic surveillance. Said electronic surveillance constituted unreasonable and invalid search and seizure for the reasons more particularly stated in defendant's motion to suppress said electronic surveillance.

f. During the course of the execution of said search and seizure warrant, Connecticut State Trooper Donald Simmons, a member of the law enforcement team executing said warrant, answered a phone call, incoming to the premises then being searched, at 3:11 p.m. During the course of said phone call an unidentified caller asked to speak to Dave and Trooper Simmons replied that he was not Dave but Rich, at which time the caller hung up. At this time, Richard Lanese stated that he often used the name Dave when answering the phone. At this point he was then advised of his rights by Special Agent Danohur.

The answering of said phone call by Trooper Simmons constituted an unlawful interception, without prior judicial authority pursuant to 18 U.S.C. Sections 2510-2520; further,

the act of Trooper Simmons in answering said incoming phone call constituted a seizure, not authorized in the command of said warrant.

The statement of Richard Lanese, to the effect that he often used the name Dave when answering the phone, should be suppressed for use as evidence against Richard Lanese in that at the time said statement was given the defendant had not been warned of his rights to remain silent, and thus said statement was obtained in violation of the defendant's rights under the 5th and 6th Amendment to the United States Constitution.

WHEREFORE, the defendant prays that his motion to suppress be granted and the items enumerated above be returned to him.

THE DEFENDANT

BY Richard T. Meehan
RICHARD T. MEEHAN
His Attorney

O R D E R

After hearing upon the foregoing Motion, it is hereby ordered that the items enumerated above, including the phone conversation and statement of the defendant, Richard Lanese, be suppressed for use as evidence against him.

THE COURT

BY _____, J.

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to John R. Tarrant, Special U.S. Attorney and to Peter R. Casey, Assistant U.S. Attorney for the District of Connecticut.

Richard T. Meehan
RICHARD T. MEEHAN
Attorney at Law
37036

INVENTORY

ITEM NO.	DESCRIPTION OF ARTICLE	WHERE LOCATED	AGENT'S INITIALS
#1	~~Four slips of paper from Bowden Mtg~~	Large Bureau Top	JJM
#2	~~4 sheets of paper listing names & baseball statistics & 3 sheets of paper & 1 small memo sheet listing names & initials and points on Teams.~~	Lower left hand drawer of Large bureau	JJM
#3	~~Index card box with names & addresses~~	Bureau drawer of Master BR	JRW
#4	~~Bag of misc action papers~~ FOOTBALL Figures w/ ~~pencils~~, pens,	Master BR closet shelf	JRW
#5	~~5 & 3/4 sheets of plain paper &~~ ~~four pencils drawer~~	Nite table Master BR	NJM
#6	~~Table phone - color black w/~~ ~~# 878-6624~~	Master BR	JAD
#7	~~Wall phone - color green w/~~ ~~# 878-7705~~	Kitchen	JAD
~~WW~~	~~WW~~	~~WW~~	~~WW~~
#8	~~Address book~~	Kitchen	WJM
R.L.	~~Would not sign this~~ ~~Inventory~~ J D Davalos Jr		

United States District Court
District of Connecticut
FILED AT ~~BRIDGEPORT~~
April 8, 1976
Sylvester A. Markowski, Clerk
By: ..... Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

UNITED STATES :

VS : DOCKET NO. H-298

WILLIAM DALOG :

MOTION TO SUPPRESS

The defendant, William Dalog, having been charged in the above-entitled criminal indictment, respectfully moves this Court, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure and the 4th Amendment to the United States Constitution, to suppress for use as evidence against him the items set forth in the inventory and return, a copy of which is attached hereto and made Exhibit A.

1. On or about December 30, 1971 a search and seizure warrant was issued by this Magistrate, Dion W. Moore, for the premises known as 3800 Main Street, Bridgeport, Apartment 4C, more particularly described in said search warrant.

2. On or about January 1, 1972 members of the Federal Bureau of Investigation, accompanied by local police officers, conducted a search and seized various items on the above-listed premises.

3. Said search and seizure was unreasonable and invalid for the following reasons:

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'76 JUL 26 AM 9:54
U.S. DISTRICT COURT
NEW HAVEN, CONN.

7/19/76
Gov. waives
stated in for
court the motion
is denied
RC Zampano
USDJ

MICROFILM
JUL 26 1976
BRIDGEPORT

a. The command of said search and seizure warrant authorized the seizure of "gambling records and wagering paraphernalia and evidence of a criminal offense in violation of laws of the United States, including but not limited to, betting slips and records, account sheets and books, line and price sheets and notation, sports information papers and schedules, telephone instruments, slips and books, lists of code names, financial statements, and United States currency... The command of said search and seizure warrant was overly broad and left to the discretion of the executing officers what items were to be seized, thus constituting a general warrant and rendering said search conducted under its authority as a general exploratory search.

b. The specific items included within the command of said warrant, and set forth above, include innocuous items, such as account sheets and books, sports information papers and schedules, slips and books, financial statements and United States currency, bearing no relation to the crime purported to have been committed, as further set forth in the command of said search and seizure warrant.

4. Said search and seizure is further invalid in that the affidavit in support of said search and seizure warrant fails to set forth sufficient, reliable facts, to allow a neutral and dettached magistrate to make an independent determination that probable cause existed to believe that the items sought to be seized were present on the premises of the defendant, in that:

a. The bulk of the information set forth in the affidavit of Special Agent Danny F. Steinke, and relied upon by Special Agent Steinke concluding that probable cause existed to justify the search and seizure, was Special Agent Steinke's synopses of phone conversations between certain named individuals obtained as a result of a Court ordered wire tap in December of 1971. Within Special Agent Steinke's synopses of conversations seized pursuant to said wire tap are statements attributed to the defendant, Nicholas Lanese. At page 8 of said affidavit it is related that on December 17, 1971 at 2:04 p.m. William Balog operating telephone number 272-5421, received a phone call from Nicholas Lanese at which time they allegedly discussed aspects of a purported gambling operation. It appears from this paragraph of Agent Steinke's affidavit that the identity of Nicholas Lanese and William Balog as the parties to said conversations has been established. An examination of the transcript of this conversation indicates that the parties to said conversation were listed as "Bill" and "UM", which appears to be an abreviation for the phrase "unidentified male" employed throughout the wire tap transcripts. Special Agent Steinke fails to set forth any facts indicating the manner in which he concluded that the parties t said conversation were in fact William Balog and Nicholas Lanese. The identification of the parties to that conversation contained in paragraph 8 of the affidavit is a bare conclusion and assertion by Special Agent Steinke not founded upon fact and further constitutes a deception or other imposition upon

the issuing magistrate. At page 9 of said affidavit a conversation is related again between William Balog and Nicholas Lanese as having occured at 7:52 p.m. on December 17, 1971. An examination of the transcript of said conversation indicates that said conversation occured between Bill Balog and "Uh" later referred to in conversation as "Nick". No facts are set forth in said affidavit to justify the conclusion of Agent Steinke that Bill Balog was in fact a party to said conversation and that "Nick" was in fact Nicholas Lanese.

b. Said affidavit fails to set forth sufficient facts to allow a magistrate to determine that probable cause exists to believe that the items specified in the command of said warrant were in fact upon the person of the defendant, in that, said affidavit merely relates conversations seized pursuant to the Court ordered wire tap and combines the synopses of said conversations with the speculation and conjecture of Agent Steinke, purportedly based on his experience, as set forth under the title "sports bookmaking" on pages 1, 2, 3, 4 of said affidavit.

c. Said affidavit is further invalid in that pages 5 and 6 of said affidavit relate information received from an informant, without indicating sufficient facts to establish a reliability of said informant.

d. Said affidavit is further invalid in that the greater part of the information related therein was obtained as a result of electronic surveillance. Said electronic surveillance constituted unreasonable and invalid search and

for the reasons more particularly stated in defendant's motion to suppress said electronic surveillance.

2. Further, said search and seizure is invalid in that executing officers seized the following items, not named in the command of said warrant, and not otherwise subject to seizure, thus rendering said search and seizure general and exploratory, and invalid: a telechron electric clock, an RCA portable radio, $296.34 in United States currency seized from the person of William R. Balog.

WHEREFORE, the defendant prays that his motion to suppress be granted and the items enumerated above be returned to him.

THE DEFENDANT

BY Richard T. Meehan
RICHARD T. MEEHAN
His Attorney

O R D E R

After hearing upon the foregoing Motion, it is hereby ordered that the following items be suppressed:

THE COURT

BY _____, J.

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to John R. Tarrant, Special U.S. Attorney and to Peter R. Casey, Assistant U.S. Attorney for the District of Connecticut.

Richard T. Meehan
RICHARD T. MEEHAN
Attorney at Law
37036

RETURN

I received the attached search warrant , 19 , and have executed it as follows:

On , 19 at o'clock M, I searched { the person / the premises } described in the warrant and

I left a copy of the warrant with _____
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of

and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

_____

Subscribed and sworn to and returned before me this day of , 19

_____
U.S. Magistrate

INVENTORY

ITEM NO.	DESCRIPTION OF ARTICLE	WHERE LOCATED	AGENT'S INITIALS
1	[illegible]	[illegible]	[illegible]
2	[illegible] #1-202-530-[illegible]	"	[illegible]
3	[illegible] with telephone number	"	[illegible]
4	[illegible] slip signed Delanoy		[illegible]
5	[illegible]		[illegible]
6	[illegible] 3,4,5,6,7	[illegible]	[illegible]
7	[illegible] (5) 12/21/71 12/20/71 [illegible]	[illegible] TABLE	RVK
8	[illegible] TELEPHONE TABLE	TELEPHONE TABLE	J.C
	[illegible]		J.C
	[illegible]		J.C.
	(2 slips paper) Tues Dec 21 (7 slips), Wed		J.C
	Dec 22 (6 slips), Thurs Dec 23 (10), Sat Dec		J.C.
	25th [illegible] Dec 26 (10) Mon Dec 27 (4),		J.C
	[illegible] 28 (10), Wed Dec 29 (14), Thurs		J.C.
	[illegible], Sat Dec 31 (15)		J.C
9	Three (3x5) [illegible] pages with names, [illegible]	[illegible] TELEPHONE TABLE	J.C.
10	10 slips paper, with names & [illegible]	TELEPHONE TABLE	J.C
11	[illegible] with [illegible] & 2 pads	" "	J.C.
12	[illegible] 1/1/72	" "	J.C.
13	[illegible] 12/20/71, 12/20/71, [illegible] 12/22/71, [illegible]	[illegible] TELEPHONE TABLE	RJK
14	[illegible], 1 pen, 1 pencil	TELEPHONE	J.C.
15	Trim Brite Soap [illegible] 372-5434	" "	J.C.
16	[illegible] pad in Newberg	[illegible]	JJS
17	5x8 [illegible] pages Bruce & Beth [illegible]	[illegible]	
18	[illegible] Electric clock	[illegible] table	J.C
19	RCA [illegible] Radio	" "	J.C.
	[illegible]		
	[illegible] 1972		

United States District Court
District of Connecticut
FILED AT ~~Bridgeport~~

April 5, 1976
Sylvester A. [illegible], Clerk

By: _____
Deputy Clerk

UNITED STATES :

: DOCKET NO. [illegible]

[illegible] :

MOTION TO SUPPRESS

The defendant, Nicholas V. Lemos, having been charged [illegible] and moves, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure and the [illegible] to suppress the use as evidence against him at the trial, to suppress the use as evidence against him at the following items: [illegible] in the amount of $135.00; [illegible] in the total sum of $1,201.00, seized on or about January 1, 1972, for the following reasons:

1. On December 30, 1971, a search and seizure warrant for the person of [illegible] was issued by Richard [illegible], United States Magistrate.

2. On or about January 1, 1972, in pursuant to said search and seizure warrant, the person of the defendant, [illegible] was searched by members of the Federal Bureau of Investigation, and the items enumerated above were seized.

[illegible]

7/19/76
In accordance stated in open court, the motion is denied
RL Zampano
4502

MICROFILM
JUL 26 1976
BRIDGEPORT

BEST COPY AVAILABLE

3. Said search and seizure was unreasonable and invalid for the following reasons:

a. The command of said search and seizure warrant authorized the seizure of "gambling records and wagering paraphernalia and evidence of a criminal offense in violation of laws of the United States, including but not limited to, betting slips and records, account sheets and books, line and price sheets and notations, sports information papers and schedules, telephone instruments, slips and books, lists of code names, financial statements, and United States currency." The command of said search and seizure warrant was overly broad and left to the discretion of the executing officers what items were to be seized, thus constituting a general warrant and rendering said search conducted under its authority as a general exploratory search.

b. The specific items included within the command of said warrant, and set forth above, include innocuous items, such as account sheets and books, sports information papers and schedules, slips and books, financial statements and United States currency, bearing no relation to the crime reported to have been committed, as further set forth in the command of said search and seizure warrant.

4. Said search and seizure is further invalid in that the affidavit in support of said search and seizure warrant fails to set forth sufficient, reliable facts, to allow a neutral and dettached magistrate to make an independent determination that probable cause existed to believe that the items sought to be seized were present on the person of the defendant, in that:

a. The bulk of the information set forth in the affidavit of Special Agent Danny F. Steinke, and relied upon by Special Agent Steinke concluding that probable cause existed to justify the search and seizure, was Special Agent Steinke's synopses of phone conversations between certain named individuals obtained as a result of a Court ordered wire tap in December of 1971. Within Special Agent Steinke's synopses of conversations seized pursuant to said wire tap are statements attributed to the defendant Nicholas Lanese. At page 8 of said affidavit it is related that on December 17, 1971 at 2:34 p.m. William Dalog operating telephone number 372-5434, received a phone call from Nicholas Lanese at which time they allegedly discussed aspects of a purported gambling operation. It appears from this paragraph of Agent Steinke's affidavit that the identity of Nicholas Lanese and William Dalog as the parties to said conversations has been established. An examination of the transcript of this conversation indicates that the parties to said conversation were listed as "Bill" and "UM" , which appears to be an abreviation for the phrase "unidentified male" employed throughout the wire tap transcripts. Special Agent Steinke fails to set forth any facts indicating the manner in which he concluded that the parties to said conversation were in fact William Dalog and Nicholas Lanese. The identification of the parties to that conversation contained in paragraph 8 of the affidavit is a bare conclusion and assertion by Special Agent Steinke not founded upon fact and further constitutes a deception or other imposition upon

the issuing majistrate. At page 9 of said affidavit a conversation is related again between William Balog and Nicholas Lanese as having occured at 7:52 p.m. on December 17, 1971. An examination of the transcript of said conversation indicates that said conversation occured between Bill Balog and "UM" later referred to in conversation as "Nick." No facts are set forth in said affidavit to justify the conclusion of Agent Steinke that Bill Balog was in fact a party to said conversation and that "Nick" was in fact Nicholas Lanese.

b. Said affidavit fails to set forth sufficient facts to allow a majistrate to determine that probable cause exists to believe that the items specified in the command of said warrant were in fact upon the person of the defendant, in that, said affidavit merely relates conversations seized pursuant to the Court ordered wire tap and combines the synopses of said conversations with the speculation and conjecture of Agent Steinke, purportedly based on his experience, as set forth under the title "sports bookmaking" on pages 1, 2, 3, 4 of said affidavit.

c. Said affidavit is further invalid in that pages 5 and 6 of said affidavit relate information received from an informant, without indicating sufficient facts to establish the reliability of said informant.

d. Said affidavit is further invalid in that the greater part of the information related therein was obtained as a result of electronic surveillance. Said electronic surveillance constituted unreasonable and invalid search and

seizure for the reasons more particularly stated in defendant's motion to suppress said electronic surveillance.

WHEREFORE, the defendant prays that his motion to suppress be granted and the items enumerated above be returned to him.

THE DEFENDANT

BY Richard T. Meehan
RICHARD T. MEEHAN
His Attorney

ORDER

After hearing upon the foregoing Motion, it is hereby ordered that the following items be suppressed:

THE COURT

BY _____, J.

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to John R. Tarrant, Special U.S. Attorney and to Peter R. Casey, Assistant U.S. Attorney for the District of Connecticut.

Richard T Meehan
RICHARD T. MEEHAN
Attorney at Law
37036